

**CITY OF INDIANAPOLIS**  
**PARKING METER**  
**CONCESSION AGREEMENT**

dated as of

\_\_\_\_\_, 2010

by and between

CITY OF INDIANAPOLIS

and

---

## Table of Contents

## Page

ARTICLE 1	DEFINITIONS AND INTERPRETATION.....	1
Section 1.1.	Definitions .....	1
Section 1.2.	Number and Gender .....	23
Section 1.3.	Headings .....	23
Section 1.4.	References to this Agreement .....	23
Section 1.5.	References to Any Person .....	23
Section 1.6.	Meaning of Including .....	23
Section 1.7.	Meaning of Discretion.....	24
Section 1.8.	Meaning of Notice .....	24
Section 1.9.	Meaning of Promptly .....	24
Section 1.10.	Consents and Approvals .....	24
Section 1.11.	Trade Meanings .....	24
Section 1.12.	Laws .....	24
Section 1.13.	Currency .....	24
Section 1.14.	Generally Accepted Accounting Principles.....	24
Section 1.15.	Calculation of Time .....	24
Section 1.16.	Approvals, Consents and Performance by the City. ....	25
Section 1.17.	Incorporation of Schedules and Exhibit .....	26
ARTICLE 2	THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS .....	26
Section 2.1.	Grant of Concession.....	26
Section 2.2.	Closing.....	27
Section 2.3.	Deposit.....	28
Section 2.4.	Conditions Precedent; Termination. ....	29
Section 2.5.	Covenants. ....	31
Section 2.6.	Intended Treatment for Federal and State Income Tax Purposes .....	36
Section 2.7.	Closing Deliveries.....	36
ARTICLE 3	TERMS OF THE CONCESSION .....	36
Section 3.1.	Right to Use and Present Condition.....	36
Section 3.2.	Metered Parking System Operations.....	37
Section 3.3.	Operator Engagement.....	40
Section 3.4.	Authorizations; Qualifications. ....	41
Section 3.5.	No Encumbrances. ....	41
Section 3.6.	Single Purpose Covenants .....	43
Section 3.7.	Rights of the City to Access and Perform Work on the Metered Parking System. ....	43
Section 3.8.	Payment of Taxes.....	45
Section 3.9.	Utilities .....	45
Section 3.10.	Notices of Defaults and Claims. ....	46
Section 3.11.	Assignment of Operating Agreements and Plans .....	46
Section 3.12.	City Use of Information and Records .....	47
Section 3.13.	Metering Devices .....	47

## **Table of Contents**

	<b><u>Page</u></b>
Section 3.14. Payments by the City .....	47
Section 3.15. Naming Rights and Commercial Advertisements and Activities. ....	48
Section 3.16. Reversion of Metered Parking System.....	48
Section 3.17. Police, Fire, Emergency, and Public Safety Access Rights .....	48
Section 3.18. Competing Public Parking Facility. ....	48
Section 3.19. Employee Parking Program.....	49
ARTICLE 4 CAPITAL IMPROVEMENTS .....	50
Section 4.1. Concessionaire Responsibility for Capital Improvements .....	50
Section 4.2. Authorizations Related to Capital Improvements.....	50
Section 4.3. City Responsibility for Capital Improvements .....	51
Section 4.4. Required Payment Options.....	51
ARTICLE 5 MODIFICATIONS .....	51
Section 5.1. City Directives .....	51
Section 5.2. Concessionaire Requests .....	52
Section 5.3. Performance of Modifications .....	52
ARTICLE 6 OPERATING STANDARDS.....	52
Section 6.1. Compliance with Operating Standards.....	52
Section 6.2. Proposed Operating Standards.....	53
Section 6.3. Modified Operating Standards.....	53
ARTICLE 7 METERED PARKING REVENUES AND PARKING ENFORCEMENT REVENUES .....	54
Section 7.1. Metered Parking Fees and Metered Parking Fines. ....	54
Section 7.2. Designation and Removal of Metered Parking Spaces. ....	54
Section 7.3. RESERVED.....	56
Section 7.4. Payments for Permanent Removal.....	56
Section 7.5. Determination of Permanent Removal Payment. ....	57
Section 7.6. Temporary Closure of Metered Parking Spaces. ....	58
Section 7.7. Additional Metered Parking Spaces.....	59
Section 7.8. RESERVED.....	61
Section 7.9. Compensation for Metered Parking Fee; Period of Operation Adjustments; and Changes Impacting Parking Enforcement Revenues. ....	61
Section 7.10. Right to Challenge .....	62
ARTICLE 8 REPORTING; AUDITS; INSPECTIONS .....	62
Section 8.1. Reports.....	62
Section 8.2. Information. ....	63
Section 8.3. Inspection, Audit and Review Rights of the City. ....	64
Section 8.4. Audits, Assistance, Inspections and Approvals .....	66
ARTICLE 9 REPRESENTATIONS AND WARRANTIES .....	66
Section 9.1. Representations and Warranties of the City .....	66
Section 9.2. Representations and Warranties of the Concessionaire .....	69
Section 9.3. Non-Waiver .....	71

## **Table of Contents**

	<b><u>Page</u></b>
Section 9.4. Survival .....	71
ARTICLE 10 FINANCE OBLIGATIONS .....	71
Section 10.1. Concessionaire's Obligations .....	71
Section 10.2. City's Obligations .....	71
Section 10.3. Concessionaire's Obligation for Estoppel Certificates .....	72
Section 10.4. Prohibited Tax Shelter Transactions .....	72
ARTICLE 11 COMPLIANCE WITH LAWS .....	73
Section 11.1. Compliance with Laws .....	73
Section 11.2. Non-Discrimination; MBE/WBE .....	73
Section 11.3. Federal Non-Discrimination Laws .....	73
Section 11.4. Non-Collusion .....	74
Section 11.5. Conflict of Interest .....	74
Section 11.6. Drug-Free Workplace Certification .....	74
ARTICLE 12 INDEMNIFICATION .....	74
Section 12.1. Indemnification by the Concessionaire .....	74
Section 12.2. Indemnification by the City .....	75
Section 12.3. Agency for Representatives .....	75
Section 12.4. Third Party Claims. ....	75
Section 12.5. Direct Claims .....	76
Section 12.6. Failure to Give Timely Notice .....	76
Section 12.7. Reductions and Subrogation .....	77
Section 12.8. Payment and Interest .....	77
Section 12.9. Limitation on Certain Claims .....	77
Section 12.10. Other Matters. ....	78
Section 12.11. Offset Rights; Limitations on Certain Damages .....	78
Section 12.12. Survival .....	78
ARTICLE 13 INSURANCE .....	78
Section 13.1. Insurance Coverage Required .....	78
Section 13.2. Additional Requirements .....	80
Section 13.3. Damage and Destruction. ....	82
ARTICLE 14 ADVERSE ACTIONS .....	86
Section 14.1. Adverse Action. ....	86
Section 14.2. Termination. ....	87
Section 14.3. Right of City to Remedy .....	88
Section 14.4. Other Actions by Governmental Authorities .....	88
ARTICLE 15 DELAY EVENTS AND CONCESSION COMPENSATION .....	89
Section 15.1. Delay Events .....	89
Section 15.2. Relationship to Compensation Event .....	90
Section 15.3. Payment of Concession Compensation. ....	90
ARTICLE 16 DEFAULTS; LETTERS OF CREDIT .....	91

## **Table of Contents**

	<b><u>Page</u></b>
Section 16.1. Default by the Concessionaire. ....	91
Section 16.2. Defaults by the City. ....	94
Section 16.3. Letters of Credit. ....	97
Section 16.4. Consequences of Termination or Reversion.....	100
Section 16.5. Termination Other Than Pursuant to Agreement .....	102
ARTICLE 17 RESTRICTIONS ON TRANSFERS .....	102
Section 17.1. Transfers by the Concessionaire. ....	102
Section 17.2. Assignment by the City .....	103
ARTICLE 18 LENDER'S RIGHTS AND REMEDIES .....	104
Section 18.1. Collateral Assignments .....	104
Section 18.2. Notices and Payments to Collateral Assignees.....	105
Section 18.3. Collateral Assignee's Right to Cure .....	106
Section 18.4. Rights of the Collateral Assignee. ....	106
Section 18.5. City's Termination of this Agreement; New Agreement.....	107
Section 18.6. Right to Arbitration .....	108
Section 18.7. Recognition by the City of Collateral Assignee .....	108
Section 18.8. City's Right to Purchase Indebtedness Secured by Collateral Assignment. ....	108
ARTICLE 19 DISPUTE RESOLUTION.....	110
Section 19.1. Scope .....	110
Section 19.2. Informal Dispute Resolution Procedures .....	110
Section 19.3. Mediation.....	110
Section 19.4. Arbitration .....	110
Section 19.5. Provisional Remedies .....	112
Section 19.6. Tolling .....	112
Section 19.7. Technical Arbitration. ....	112
ARTICLE 20 MISCELLANEOUS .....	114
Section 20.1. Notice .....	114
Section 20.2. Entire Agreement .....	115
Section 20.3. Amendment .....	115
Section 20.4. Waiver of Rights .....	115
Section 20.5. Severability .....	115
Section 20.6. Governing Law .....	116
Section 20.7. Submission to Jurisdiction.....	116
Section 20.8. Further Acts .....	116
Section 20.9. Costs.....	116
Section 20.10. Interest.....	117
Section 20.11. Inurement and Binding Effect .....	117
Section 20.12. No Partnership or Third Party Beneficiaries .....	117
Section 20.13. Cumulative Remedies .....	117
Section 20.14. Counterparts; Facsimile Execution .....	117

## **Table of Contents**

## **Page**

### **SCHEDULES**

Schedule 1	Metered Parking System Contracts
Schedule 2	Operating Standards
Schedule 3	Metered Parking System Assets
Schedule 4	Methodology for Calculating Certain Concessionaire Compensation
Schedule 5	Schedule of Parking Fees and Schedule of Parking Fines
Schedule 6	Initial Permanent Removal Payment
Schedule 7	Form of Legal Opinion of Counsel to the City
Schedule 8	Form of Legal Opinion of Counsel to the Concessionaire
Schedule 9	Financial Information
Schedule 10	Special Events

### **EXHIBITS**

Exhibit A	Metered Parking System Ordinance
-----------	----------------------------------

THIS CITY OF INDIANAPOLIS PARKING METER CONCESSION AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Indianapolis, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Indiana (the "City"), and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (the "Concessionaire").

## RECITALS

WHEREAS, the City has established a Metered Parking System (as defined herein);

WHEREAS, this Agreement is an Operating Agreement, as defined in and to be entered into in accordance with, Indiana Code Section 5-23-1, and pursuant to Indiana Code Section 5-23-1 and the Metered Parking System Ordinance (as defined herein), the City is authorized to enter into the Transaction (as defined herein);

WHEREAS, the City desires to grant the Concessionaire the right to operate, maintain and improve the Metered Parking System for the Term (as defined herein) of this Agreement in connection therewith, all as hereinafter provided;

WHEREAS, the Concessionaire desires to obtain a grant from the City of the right to operate, maintain and improve the Metered Parking System and to retain the Metered Parking Revenue and the Concessionaire Parking Enforcement Revenue, and to be compensated for the operation of the Reserved Metered Parking Spaces (as defined herein), in each case, in accordance with the provisions of this Agreement, including the Operating Standards (as herein defined); and

NOW THEREFORE, for and in consideration of the premises, the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties (as defined herein) covenant and agree as follows:

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

**Section 1.1. Definitions.** Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

"AAA" means the American Arbitration Association.

"AAA Rules" has the meaning ascribed thereto in Section 19.4.

"AA-Compensation" has the meaning ascribed thereto in Section 14.1(b).

"AA-Dispute Notice" has the meaning ascribed thereto in Section 14.1(c).

"AA-Notice" has the meaning ascribed thereto in Section 14.1(c).

"AA-Preliminary Notice" has the meaning ascribed thereto in Section 14.1(c).

"Additional Metered Parking Spaces" has the meaning ascribed thereto in Section 7.7(b).

"Additional Metered Parking Revenue" means any Metered Parking Revenue derived from any Additional Metered Parking Space.

"Adjusted for Inflation" means increased by the percentage increase, if any, in the Index during the applicable adjustment period.

"Adverse Action" has the meaning ascribed thereto in Section 14.1(a).

"Affected Property" means any public or private property, including a park, highway, street, road, roadway, railroad, rail or other transit way, and any ancillary facilities related to any of the foregoing, under the jurisdiction and control of the City, any other Governmental Authority or any other Person that is located above, within the boundaries of, intersects with, crosses over or under or is adjacent to the Metered Parking Spaces or any part thereof.

"Affiliate" when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor, supervisor, sponsor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing, supervising, sponsoring or advising such fund or trust and a limited partner in a managed fund or trust shall be deemed to be an Affiliate of such fund or trust and of the Person managing, supervising, sponsoring or advising such fund or trust).

"Agreement" has the meaning ascribed thereto in the preamble to this Agreement (including all Schedules and Exhibits referred to herein), as amended, modified or supplemented from time to time in accordance with the terms hereof.

"Applicable Index" means the greater of (i) two and one-half percent (2.50%) per Year and (ii) the percentage increase, if any, in the Index from November 30 of the Year that is two Years prior to the Year the Applicable Index is to be applied to December 1 of the Year immediately prior to the Year the Applicable Index is to be applied.

"Applicable Metered Parking Fee" means as of the date of determination and with respect to the relevant Metered Parking Space, the maximum Metered Parking Fee permitted to be charged in respect of such Metered Parking Space in accordance with the Schedule of Parking Fees, increased by the Applicable Index for each remaining Year under the Term; provided that, each such increase shall be in increments of \$0.25 and shall be rounded down accordingly.



"Applicable Parking Violation Fine" means the maximum fine charged for a parking violation in respect of the Metered Parking System permitted in accordance with the Schedule of Parking Fines as of the date of determination, increased by the Applicable Index for each remaining Year under the Term; provided that, each such increase shall be in increments of \$0.25 and shall be rounded down accordingly.

"Approval", "Approved", "Approves", "Approved by the City" and similar expressions mean approved or consented to by the City in accordance with the provisions of Section 1.16.

"Assumed Liabilities" has the meaning ascribed thereto in Section 2.2(b).

"Audit and Review" and similar expressions mean, with respect to the Metered Parking System, the Metered Parking System Operations or this Agreement, the performance by or on behalf of the City of such reviews, investigations, inspections and audits as the City may reasonably determine to be necessary in the circumstances, conducted in each case in accordance with applicable United States industry accepted practices and as required by Law, but subject to, in each case, the terms and conditions set forth in this Agreement.

"Authorization" means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization or other requirement of any Person that applies to the Metered Parking System or is reasonably required from time to time for the Metered Parking System Operations.

"Bank Rate" means, as of any date of determination, the three (3) month London Interbank Offered Rate (LIBOR) (or any successor rate thereto) as reported in The Wall Street Journal (or any successor thereof).

"Bid Date" means Friday, August 6, 2010.

"Breakage Costs" means any breakage costs, make-whole premium payments, termination payments or other prepayment amounts (including debt premiums) that are required to be paid pursuant to the financing agreements providing for the Collateral Assignment Debt, including the costs that are required to be paid as a result of the prepayment of such Collateral Assignment Debt prior to its scheduled maturity date and the costs of early termination of hedging arrangements.

"Business Day" means any Day that is neither a Saturday, a Sunday nor a Day observed as a holiday by the City, the State of Indiana or the United States government.

"Cash Deposit" has the meaning ascribed thereto in Section 2.3(a).

"Casualty Cost" has the meaning ascribed thereto in Section 13.3(a).

"CE-Dispute Notice" has the meaning ascribed thereto in Section 15.3(c).

"CE-Notice" has the meaning ascribed thereto in Section 15.3(a).

"CE-Preliminary Notice" has the meaning ascribed thereto in Section 15.3(a).

"Change in Control" means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, either (i) a change in ownership so that fifty percent (50%) or more of the direct or indirect voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to another Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; provided however, that notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a "Change in Control" for the purpose of this Agreement:

(A) for purposes of clauses (i) and (ii) above, transactions in shares of a publicly traded company or other transactions involving a publicly traded company only if they do not cause such company to no longer be a publicly traded company;

(B) Transfers of direct or indirect ownership interests in the Concessionaire or the Operator (as applicable) between or among Persons that are Affiliates (including funds or similar entities managed by such Persons);

(C) transfers of shares of the Concessionaire or the Operator, or the direct or indirect parent of the Concessionaire or the Operator, as applicable, pursuant to *bona fide* open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable United States or foreign securities exchange, including any such transactions involving an initial or "follow on" public offering;

(D) transfers of direct or indirect ownership interests in the Concessionaire by any Equity Participant or its beneficial owner(s) to any Person so long as the Equity Participants or their respective beneficial owner(s) having ownership interests in the Concessionaire as of the Closing Date together retain, in the aggregate, fifty percent (50%) or more of the direct or indirect voting or economic interests in such Person or the power directly or indirectly to direct or cause the direction of management and policy of such Person, through the ownership of voting securities, the rights to elect directors, officers and managers of the Concessionaire or otherwise;

(E) Transfers of direct or indirect ownership interests in the Concessionaire by any Equity Participant or its direct or indirect beneficial owner(s) to any partners, members, shareholders, directors, officers, employees or investors who are distributees of investments held by such Equity Participant or beneficial owner(s) pursuant to any bona fide liquidation of such Equity Participant or beneficial owner(s) as a result of which securities held by such entity are distributed to such distributees; and

(F) Transfers of direct or indirect ownership interests in the Concessionaire or the Operator, as applicable (i) between or among investment funds, including infrastructure funds, and investors therein; *provided* that following such Transfer such direct or indirect ownership interests remains under common ownership, management or control, or (ii) from investment funds, including infrastructure funds, or investors therein, to any Person; *provided* that following

such Transfer such direct or indirect ownership remains under common ownership, management or control, it being understood that ownerships interest shall be deemed to be controlled by a Person if controlled in any manner whatsoever that results in control in fact, whether directly or indirectly, and whether through share ownership, a trust, a contract or otherwise.

"City" has the meaning ascribed thereto in the preamble to this Agreement.

"City Council Approval Date" means the date on which the City Council of Indianapolis approved the execution by the City of this Agreement.

"City Default" has the meaning ascribed thereto in Section 16.2(a).

"City Directive" means a written order or directive prepared by or on behalf of the City directing the Concessionaire, to the extent permitted hereby, to add or perform work in respect of the Metered Parking System in addition to that provided for in this Agreement; provided, however, that no such order or directive may in any event order or direct the Concessionaire to do any act that could reasonably be expected to violate any applicable Law or cause the Concessionaire to fail to be in compliance with this Agreement.

"City Metered Parking Revenue" means City Reserved Metered Parking Revenue and City System Revenue Sharing Amount.

"City System Revenue Sharing Amount" has the meaning ascribed thereto in Section 7.1(b).

"City Reserved Metered Parking Revenue" means any Metered Parking Revenue derived from any Reserved Metered Parking Space less any Concessionaire Metered Parking Revenue owed to the Concessionaire pursuant to Section 7.7(c).

"City's Option" has the meaning ascribed thereto in Section 18.8(a).

"Claim" means any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to indemnification under Section 12.1 or 12.2.

"Closing" has the meaning ascribed thereto in Section 2.2(a).

"Closing Consideration" has the meaning ascribed thereto in Section 2.1.

"Closing Date" has the meaning ascribed thereto in Section 2.2(a).

"Closing LOC" has the meaning ascribed thereto in Section 2.3(a).

"Closing Period" means the period commencing on the date hereof and ending on the Time of Closing.

"Collateral Assignee" means the holder or beneficiary of a Collateral Assignment or an agent, trustee or other representative or designee of such a holder or beneficiary.

"Collateral Assignee Notice Requirements" means the delivery by a holder of a Collateral Assignment to the City, no later than ten (10) Business Days after the execution and delivery of such Collateral Assignment by the Concessionaire, of a true and complete copy of the executed original of such Collateral Assignment, together with a notice containing the name and post office address of the holder of such Collateral Assignment.

"Collateral Assignee's Notice" has the meaning ascribed thereto in Section 18.8(a).

"Collateral Assignment" means any collateral assignment or other security agreement or arrangement (including a securitization transaction with respect to the Metered Parking Revenue (but excluding any City Metered Parking Revenue) and the Concessionaire Parking Enforcement Revenue) encumbering any or all of the Concessionaire Interest or the shares or equity interests in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire, in each case that satisfies all of the conditions in Section 18.1.

"Collateral Assignment Debt" means any *bona fide* debt secured by a Collateral Assignment relating to the Metered Parking System, including (i) principal (including accreted principal under interest rate hedges or bonds); (ii) accrued interest (including capitalized interest); (iii) customary fees, costs, premiums, expenses and reimbursement obligations with respect thereto owed to lenders, financial insurers, agents, trustees and similar service providers, (iv) all payment obligations under interest rate hedging agreements with respect thereto (including accreting interest rate hedging arrangements); (v) reimbursement obligations with respect thereto to any financial insurer; and (vi) an assignment in connection with a securitization transaction, in each case, pursuant to an agreement entered into prior to the delivery by the Concessionaire to the City of an AA-Preliminary Notice or a notice under Section 16.2(b) stating that a City Default has occurred, or any event of termination, cancellation, rescinding or voiding referred to in Section 16.5. For the purposes of determining the Metered Parking System Concession Value, Collateral Assignment Debt shall not include: (A) debt from an Affiliate of the Concessionaire or the Operator, unless such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith, *provided* that the Concessionaire may request at any time during the Term that the City confirms in writing, and the City shall so confirm within a reasonable time following such request, whether any such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith; (B) any increase in debt to the extent such increase is the result of an agreement or other arrangement entered into after the delivery by the Concessionaire to the City of an AA-Preliminary Notice or a notice under Section 16.2(b) stating that a City Default has occurred or any event of termination, cancellation, rescinding or voiding referred to in Section 16.5; or (C) any debt with respect to which the Collateral Assignee did not provide the City with notice of its Collateral Assignment in accordance in all material respects with the Collateral Assignee Notice Requirements.

"Compensation Event" means any of the following events: (i) any of the events set forth in Section 3.2(e)(v); (ii) the imposition of any Tax pursuant to Section 3.8(b); (iii) if the City undertakes or permits a Competing Public Parking Facility in violation of Section 3.18; (iv) the Concessionaire's compliance with or the implementation of any City Directive in accordance with Section 5.1; (v) the Concessionaire's compliance with or the implementation of or any modified or changed Operating Standard in accordance with Section 6.3; (vi) the occurrence of

an Adverse Action pursuant to Section 14.1; (vii) any "Delay Event" of the type described in clauses (v) and (vi) in the definition thereof; (viii) any failure by the City to perform or observe any of its covenants or obligations under this Agreement, including in respect of Section 3.2(f), Section 3.19(a), Section 4.3, Section 6.3(a), and Section 7.2(a); or (ix) the occurrence of any other event that under the terms of this Agreement explicitly requires the payment of Concession Compensation, including those events in Section 7, where applicable.

"Competing Public Parking Facility" has the meaning ascribed thereto in Section 3.18(a).

"Concession Compensation" means, with respect to any Compensation Event, compensation payable by the City to the Concessionaire in order to restore the Concessionaire to the same economic position the Concessionaire would have enjoyed if the applicable Compensation Event had not occurred, which compensation shall (a) if such Compensation Event is a Permanent Removal of a Metered Parking Space, be a Permanent Removal Payment determined in accordance with Section 7.4; (b) if such Compensation Event is a decrease in Metered Parking Fees or in any Period of Operation, be determined pursuant to the methodology set forth in Schedule 4; or (c) in the case of any other Compensation Event, be equal to the sum of (i) all Losses (including increased operating, financing, capital and maintenance costs and expenses, but excluding any costs and expenses that the Concessionaire would otherwise expend or incur in order to comply with this Agreement or in the ordinary course of the performance of the Metered Parking System Operations or the carrying on of business in the ordinary course) that are reasonably attributable to such Compensation Event plus (ii) the actual and estimated net losses of the Concessionaire's present and future Metered Parking Revenue and Concessionaire Parking Enforcement Revenue that are reasonably attributable to such Compensation Event (after (A) giving effect, to the extent applicable, to any increase in revenues, including Metered Parking Revenue and Concessionaire Parking Enforcement Revenue that are attributable to such Compensation Event and (B) taking into account, for purposes of estimating losses of future Metered Parking Revenue and Concessionaire Parking Enforcement Revenue, the growth prospects assumed, at a minimum, by the Technological and Operational Impact, Expected Utilization Growth Rate, Applicable Parking Violation Fine and Applicable Metered Parking Fee); provided, however, that, unless otherwise specified in this Agreement, any claim for Concession Compensation shall be made within one hundred twenty (120) Days of the date that the Concessionaire first became aware of such Compensation Event. Any Concession Compensation payable with respect to Losses or lost Metered Parking Revenue, Concessionaire Parking Enforcement Revenue or other revenues that will occur in the future shall be payable at the time such Compensation Event occurs based on a reasonable determination of the net present value of the impact of such Compensation Event over the remainder of the Term discounted at the Discount Rate. If the Concessionaire is required to provide its own capital (whether in the form of debt, equity or otherwise) with respect to compliance with or implementation of a City Directive, a modified or changed Operating Standard (for which Concession Compensation is payable in accordance with Section 6.3) or any other Compensation Event, then the Concession Compensation, shall, in addition to the components described above, take into account the actual cost to the Concessionaire of such capital and include a then applicable market-based rate of return thereon (which market-based rate of return shall be reasonably commensurate with then-prevailing rates of return for similar assets and similar or analogous financings in the parking industry and shall take account of the applicable Present Value in determining the appropriate discount rate to use in calculating such rate of return). For purposes of the preceding sentence,

the market-based rate of return shall be initially proposed in writing by the Concessionaire to the City. The City may, in accordance with the provisions of Article 19, dispute that such additional components of the market-based rate of return proposed by the Concessionaire is reasonably commensurate with then-prevailing rates of return for similar assets and similar or analogous financings in the parking industry.

"Concessionaire" has the meaning ascribed thereto in the preamble to this Agreement.

"Concessionaire Default" has the meaning ascribed thereto in Section 16.1(a).

"Concessionaire Interest" means the interest, benefits, right and franchise of the Concessionaire in the Metered Parking System created by this Agreement and the rights and obligations of the Concessionaire under this Agreement (including the interest and franchise described in Section 2.1(b), the right to receive Concession Compensation and the right to receive Termination Damages).

"Concessionaire Parking Enforcement Revenue" means the Parking Enforcement Revenue collected by the Concessionaire during the Term in accordance with Section 4(a) of Schedule 5.

"Concessionaire Request" means a written request in respect of the Metered Parking System prepared by or on behalf of the Concessionaire and addressed to the City seeking to make a fundamental change in the dimensions, character, quality or location of any part of the Metered Parking System; provided, however, that a Concessionaire Request need not be submitted in connection with operations, maintenance or repair of the Metered Parking System in the ordinary course or any other aspects of Metered Parking System Operations permitted or reserved to the Concessionaire under this Agreement, including any modification or change to the Operating Standards pursuant to Section 6.2.

"Concessionaire Reserved Metered Parking Revenue" has the meaning ascribed thereto in Section 7.7(c)(iii).

"Concession Year" means (i) if the Closing Date occurs on the first Day of a calendar month, the twelve (12) month period beginning on the Closing Date or (ii) if the Closing Date does not occur on the first Day of a calendar month, the period from the Closing Date through the end of the calendar month in which the Closing Date occurred and the next succeeding twelve (12) month period and, in either case of clause (i) or (ii), each succeeding twelve (12) month period and in any case ending on the End Date.

"Confidentiality Agreement" has the meaning ascribed thereto in Section 2.5(h).

"Consent" means any approval, consent, ratification, waiver, exemption, franchise, license, permit, novation, certificate of occupancy or other authorization, of any Person, including any Consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any applicable Law.

"Consultant" means (i) a consulting firm having experience in the operation and management of metered parking systems jointly appointed by the Parties and (ii) with respect to

a technical dispute under Section 19.7, any individual having experience in the operation and management of metered parking systems that is selected by such consulting firm to perform the professional services required to be performed by the Consultant under Section 19.7.

"Contractor" means, with respect to a Person, any contractor with whom such Person contracts to perform work or supply materials or labor in relation to the Metered Parking System, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor. For the avoidance of doubt, the Operator (if other than the Concessionaire) shall be a Contractor of the Concessionaire.

"Day" means a calendar day, beginning at 12:01 a.m. in the eastern time zone of the United States coinciding with the calendar day.

"Defending Party" has the meaning ascribed thereto in Section 12.4(c).

"Delay Event" means (i) an event of Force Majeure, (ii) a failure to obtain, or delay in obtaining, any Authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by technical and scheduling or other reasonable measures of the Concessionaire), (iii) the enactment of a new Law or the modification, amendment or change in enforcement or interpretation of a Law (including a change in the application thereof by any Governmental Authority) arising after the Bid Date, (iv) a delay caused by the performance of works (including the activities authorized by Section 3.7) carried out by a Governmental Authority or any utility or railway operator or Person not acting under the authority or direction of, or pursuant to a contract, sublease or any other agreement or arrangement with the Concessionaire or the Operator, (v) a delay caused by a failure by the City to perform or observe any of its covenants or obligations under this Agreement or (vi) a delay caused by the presence in, on, under or around the Metered Parking Spaces of Hazardous Substances or by any actions pursuant to Environmental Laws, which in each case results in or would result in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement; except to the extent that the consequences of such delay or the cause thereof is specifically dealt with in this Agreement or arises by reason of (A) the negligence or intentional misconduct of the Concessionaire or its Representatives, (B) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement or (C) except as contemplated by Section 5.1, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire. For the avoidance of doubt, a Delay Event shall not include any of the exceptions listed in clauses (i) through (iv) of the definition of Force Majeure.

"Delay Event Dispute Notice" has the meaning ascribed thereto in Section 15.1(e).

"Delay Event Notice" has the meaning ascribed thereto in Section 15.1(e).

"Delay Event Remedy" has the meaning ascribed thereto in Section 15.1(d).

"Depository" means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire, that enters into an agreement with the Concessionaire to serve as depository

pursuant to this Agreement, provided that such Depositary shall have an office, branch, agency or representative located in the City of Indianapolis.

"Designated Senior Person" means such individual who is designated as such from time to time by each Party for the purposes of Article 19 by written notice to the other Party.

"Direct Claim" means any Claim by an Indemnified Party against an Indemnifier that does not result from a Third Party Claim.

"Discount Rate" means eight percent (8%).

"Document" has the meaning ascribed thereto in Section 1.16(c).

"Earnings" means the actual revenue in a given time period from a Metered Parking Space generated from Metered Parking Revenue minus Operating Costs incurred during such time period associated with such Metered Parking Space.

"EBITDA" means for a given time period, Earnings on the applicable Metered Parking Spaces before interest, income taxes, depreciation and amortization allocated to such Metered Parking Spaces with such allocation based on the same allocation formula set forth in the definition of Operating Costs.

"Eligible Investments" means any one or more of the following obligations or securities: (i) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal funds or bankers' acceptances issued by any Institutional Lender (provided that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such Institutional Lender at the time of such investment or contractual commitment providing for such investment have been rated "A" (or the equivalent) or higher by a Rating Agency or any other demand or time deposit or certificate of deposit fully insured by the Federal Deposit Insurance Corporation); (iii) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated "A" (or the equivalent) or higher by a Rating Agency at the time of such investment; (iv) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" (or the equivalent) or higher by a Rating Agency; and (v) other investments then customarily accepted by the City in similar circumstances; provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument.

"Employee Parking Program" has the meaning ascribed thereto in Section 3.19(b).

"Encumbrance" means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, deficiency in title or chain of ownership, servitude, option,



reservation, lease, claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Law, judicial process, contract, agreement or otherwise created.

"End Date" means the date on which this Agreement expires or is terminated.

"Enforcement Contractor" has the meaning ascribed thereto in Section 3.2(e)(vii).

"Enforcement Sub-Contractor" has the meaning ascribed thereto in Section 3.2(e)(vii).

"Enforcement Policies and Procedures" means the policies and procedures established by the City and the Concessionaire for the administration and enforcement of parking rules and regulations that are designed to deter parking violations, including procedures for the issuance and collection of parking tickets and citations for violations of the parking rules and regulations with respect to the Metered Parking Spaces and Residential Permits, by such means as permitted by Law, in each case, as set forth in the Operating Standards.

"Environment" means soil, surface waters, ground waters, inland waters, land, stream sediments, surface or subsurface strata, ambient air, flora, fauna and natural resources.

"Environmental Laws" means any Laws regulating or imposing liability or standards of conduct concerning or relating to the regulation, use, protection or restoration of human health, safety or the Environment.

"Equity Participant" means any Person who holds any shares of capital stock, units, partnership or membership interests, other equity interests or equity securities of the Concessionaire.

"Escrow Agent" means a bank, trust company or national banking association selected by the City to hold the Cash Deposit.

"Excluded Liabilities" has the meaning ascribed thereto in Section 2.2(b).

"Exempt Persons" means Persons exempted by Law from paying Metered Parking Fees otherwise applicable to members of the general public pursuant to Indiana Code § 9-18-17 and § 9-18-18.

"Expected Utilization Rate" means, with respect to a Metered Parking Space and as of the first Day of a Year commencing with the second Year, the percentage obtained by dividing the actual Metered Parking Revenue derived from the operation of such Metered Parking Space during the previous Year by the Full Utilization Amount of such Metered Parking Space for such measurement period. In the event that the Concessionaire reasonably determines that anomalies exist in the previous Year, "Expected Utilization Rate" shall be the percentage obtained by dividing the actual Metered Parking Revenue derived from the operation of such Metered Parking Space during the previous three (3) Year period by the Full Utilization Amount of such Metered Parking Space for such measurement period. For purposes of the preceding sentence, the Concessionaire shall deliver written notice to the City of its determination of whether anomalies exist in the previous Year, along with a rationale therefor, which determination shall be subject to the Approval by the City in accordance with Section 1.16.

"Expected Utilization Growth Rate" means one-half percent (0.5%) per Year.

"Force Majeure" means any event beyond the reasonable control of the Concessionaire that delays, interrupts or limits the performance of the Concessionaire's obligations hereunder or the use of the Metered Parking System by any Person, including an intervening act of God or public enemy, war (whether or not declared), invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority, aircraft crash or forced landing, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tornado, flood, hurricane, storm, earthquake or other natural disaster, riot or other public disorder, epidemic, quarantine restriction, strike, labor dispute or other labor protest, stop-work order or injunction issued by a Governmental Authority, governmental embargo, except to the extent that the consequence of such event is otherwise specifically dealt with in this Agreement or arises by reason of (i) the negligence or intentional misconduct of the Concessionaire or its Representatives, (ii) any act or omission by the Concessionaire or its Representatives in material breach of the provisions of this Agreement, (iii) except as contemplated by Section 5.1, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire or (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire or its Representatives to supply materials or services for or in connection with the Metered Parking System Operations.

"Full Utilization Amount" means, with respect to a Metered Parking Space and during a particular measurement period, the Metered Parking Revenue to be derived from the operation of such Metered Parking Space during such measurement period based upon the assumptions that (i) such Metered Parking Space is utilized for the parking of motor vehicles at all times during each Period of Operation during the measurement period, (ii) the same motor vehicle is parked in the Metered Parking Space during each Period of Stay for two hours and (iii) each Metered Parking Fee is paid with respect to the use of such Metered Parking Space.

"Governmental Authority" means the City, the State of Indiana, or any political subdivision or instrumentality thereof and any court, federal, state, county, local (including all municipalities, municipal authorities and districts) or foreign government, department, commission, board, bureau, agency or instrumentality, or other regulatory, administrative, governmental or quasi-governmental authority.

"Hazardous Substance" means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, regulated substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

"Indemnified Party" means any Person entitled to indemnification under this Agreement.

"Indemnifier" means any Party obligated to provide indemnification under this Agreement.

"Indemnity Payment" has the meaning ascribed thereto in Section 12.7.

"Index" means the "Consumer Price Index – United States, All Items" (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the Index is changed so that the base year of the Index changes, the Index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; provided further that if the Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Information" means any and all information relating to the Metered Parking System Operations, including (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding Metered Parking Revenue and Parking Enforcement Revenue (including information regarding the collection thereof), operating income, expenses, capital expenditures and budgeted operating results relating to the Metered Parking System Operations, (ii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Metered Parking System, in connection with the Metered Parking System or the Metered Parking System Operations and (iii) proper, complete and accurate books, records, accounts and documents relating to the Metered Parking System Operations, including any Information that is stored electronically or on computer-related media; provided, however, that nothing in this Agreement shall require the disclosure by any Party of Information that is protected by attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party.

"Institutional Lender" means any of the following: (a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects; (b) any (i) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States (if such qualification is necessary in connection with the acquisition of Collateral Assignment Debt), (iii) pension fund, foundation or university or college or other endowment fund, (iv) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm; (c) any "qualified institutional buyer" under Rule 144(A) under the Securities Act or any other similar Law hereinafter enacted that defines a similar

category of investors by substantially similar terms; or (d) any other financial institution or entity designated by the Concessionaire and Approved by the City (provided that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the City); provided, however, that each such entity (other than entities described in clause (c) of this definition) or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$500,000,000, which shall include, in the case of an investment or advisory firm or fund, assets controlled by it or under management.

"Interest Rate Adjustment" has the meaning ascribed thereto in Section 2.2(c).

"Law" means any constitution, order, writ, injunction, decree, judgment, law, directive, rule, regulation, ordinance, decision, principal of common law, opinion, ruling, policy, statute, code, rule or regulation of any Governmental Authority.

"Letter of Credit" means an irrevocable, unconditional, commercial letter of credit, in favor of the City, in form and content reasonably acceptable to the City, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other Document, which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has a current credit rating of A1 or better by Standard & Poor's Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized Rating Agencies if the named Rating Agency ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the City and Approved by the City prior to the submission of the letter of credit), and (ii) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of Indianapolis, the City of New York, New York or such other location that is reasonably acceptable to the City. For the avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under the Letter of Credit may be secured by a Collateral Assignment.

"Loss" or "Losses" means, with respect to any Person, any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such Person, but excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual. For the avoidance of doubt, all actual payments reasonably made by any Person to third parties or reasonable out-of-pocket and documented costs or expenses actually suffered or incurred by any Person in respect of Claims made by third parties shall constitute Losses of such Person whether or not such payments or such costs and expenses relate to punitive, special, indirect and consequential damages or contingent liabilities of such third parties.

"Material Adverse Effect" means any event, occurrence, change in facts, conditions or other change or effect which has resulted or could reasonably be expected to be materially adverse to any of the following: the Concessionaire, its business, its reasonable prospects, operations or results of operation of the Metered Parking System taken as a whole; provided,

however, that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting the financial services industries generally; (iv) any existing event or occurrence of which the Concessionaire has actual knowledge as of the Bid Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated hereby (except for any litigation relating thereto or to this Agreement (or the matters contemplated herein)); and (vi) negligence, intentional misconduct or bad faith of the Concessionaire or its Representatives.

"Mayor" means the Mayor of the City or another City official acting under the direction and pursuant to the authority of the Mayor.

"Mediator" has the meaning ascribed thereto in Section 19.3.

"Metered Parking Fee" means the fee established by the City as consideration for the privilege of parking a motor vehicle all as set forth in the Schedule of Parking Fees.

"Metered Parking Revenue" means, during the Term, any revenues derived from the Metered Parking Fees and any other revenue collected by the Concessionaire from the operation of Metered Parking Spaces, excluding any Parking Enforcement Revenue related thereto.

"Metered Parking Services" means the services to be provided by the Concessionaire as grantee of the concession under this Agreement.

"Metered Parking Spaces" means those spaces during certain periods of time the City requires the payment of a Metered Parking Fee for parking a motor vehicle at that space or place for a limited period of time and such designation is effective for all purposes of this Agreement notwithstanding that Exempt Persons using that parking space or place may be exempted from paying the Metered Parking Fee otherwise applicable to members of the general public, which spaces shall be set out in the Metered Parking Spaces Inventory.

"Metered Parking Spaces Inventory" means, at any time, the list of Metered Parking Spaces included in the Metered Parking System set forth in the Operating Plan (as defined in the Operating Standards), which shall initially include, at a minimum, each space in any Zone that contains or should contain a Metering Device, as set out in Schedule 3 or otherwise, including those spaces indicated as "Future Authorized Metered Parking Spaces" pursuant to the Metered Parking Ordinance, those spaces that contain a broken or defective Metering Device, and each Metered Parking Space listed on the "master inventory" provided by the City to the Concessionaire prior to the Bid Date (which is set forth in that certain Excel workbook with a filename of Parking Meter Inventory.xls in the electronic data room provided by the City), excluding, however, the sixteen (16) Metered Parking Spaces in the City Market parking lot and the four (4) Metered Spaces north of Market Street and on the west side of Alabama Street immediately adjacent to the City Market, in each case, without duplication, and subject to the Concessionaire's rights pursuant to Section 4.4.

"Metered Parking System" means the Metering Devices, supporting structures, computer systems and software used in connection with the administration of Metered Parking Spaces and the collection of Metered Parking Fees, Temporary Closure Fees and Concessionaire Parking Enforcement Revenue resulting therefrom, and all improvements of any and every kind whatsoever forming a part of and used in connection with the operation and maintenance of the metering system associated with the Metered Parking Spaces (including all Metering Devices but excluding any interest in the streets, sidewalks, paving or similar real property).

"Metered Parking System Assets" means, (i) as of the time immediately prior to the Time of Closing, the personal property of the City used in connection with operations of the Metered Parking System set forth on Schedule 3, which Schedule will include the locations of new Metered Parking Spaces as agreed to by the City and the Concessionaire, (ii) all cash receivables due to the City existing as of the Time of Closing, including any Parking Enforcement Revenues generated but not collected as of the Time of Closing, and (iii) from and after the Time of Closing, the personal property of the Concessionaire or the Operator used in connection with the operations of the Metered Parking System.

"Metered Parking System Concession Value" means, at any given date, the fair market value of the Concessionaire Interest at the time of the occurrence of the relevant Adverse Action, City Default or any event of termination, cancellation, rescinding or voiding referred to in Section 16.5 (but excluding the effect of such Adverse Action, City Default or such other event referred to in Section 16.5) and taking into account reasonably foreseeable improvements to the Metered Parking System and the operations and revenues thereof (including the Expected Utilization Growth Rate and the Technological and Operational Impact), as determined pursuant to a written appraisal by an independent third party appraiser that is nationally recognized in appraising similar assets and businesses and taking into consideration future payments owed the Concessionaire and that is acceptable to the City and the Concessionaire; provided, however, that the Metered Parking System Concession Value shall in no event be less than the sum of (A) the amount of all Collateral Assignment Debt (plus Breakage Costs), and (B) the Subscribed Equity Amount, in each case, calculated on the End Date. If the Parties fail to agree upon such a single appraiser within thirty (30) Days after a Party requests the appointment thereof, then the City and the Concessionaire shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select a third independent third party appraiser to make the appraisal referred to above. The City shall pay the reasonable costs and expenses of any appraisal.

"Metered Parking System Contracts" means the agreements to which the City is a party relating to the operations of the Metered Parking System that are set forth on Schedule 1.

"Metered Parking System Operations" means (i) the operation, management and maintenance of the Metered Parking System, (ii) all Parking Enforcement permitted under this Agreement, and (iii) all other actions relating to the Metered Parking System that are performed by or on behalf of the Concessionaire pursuant to this Agreement.

"Metered Parking System Ordinance" means that certain ordinance adopted by the City Council on \_\_\_\_\_, 2010 authorizing the City to enter into the Transaction and to comply with all of the obligations and undertakings of the City contemplated hereunder, which

ordinance shall have been executed and delivered by the Mayor on behalf of the City and the City Council and is attached hereto as Exhibit A.

"Metering Devices" means the parking meters, pay and display stations, pay by space stations, electronic metering devices, and other similar devices that may be used from time to time in connection with the Metered Parking System Operations.

"New Agreement" has the meaning ascribed thereto in Section 18.5(a).

"New Applicable Metered Parking Fee" means the new Metered Parking Fee following a decrease in the Metered Parking Fee, increased by the Applicable Index for each remaining Year under the Term; provided that, each such increase shall be in increments of \$0.25 and shall be rounded down accordingly.

"No Parking Zone" means a Metered Parking Space in respect of which the City has restricted or prohibited the use of such Metered Parking Space during the applicable Period of Operation.

"Notice Period" has the meaning ascribed thereto in Section 12.4(b).

"Offsets" has the meaning ascribed thereto in Section 12.11.

"Operating Agreement" means any material agreement, contract or commitment to which the Concessionaire is a party relating to the Metered Parking System Operations as in force from time to time (including any Parking Enforcement Agreement and any warranties or guaranties) but excluding any Collateral Assignment and any finance documents related thereto.

"Operating Agreements and Plans" has the meaning ascribed thereto in Section 3.11.

"Operating Costs" means the actual costs associated with a Metered Parking Space based on the total operating costs of the Metered Parking System (not including any costs of enforcement or any financing costs) for a given period of time multiplied by a fraction, the numerator of which is 1 and the denominator of which is the total number of Metered Parking Spaces in the Metered Parking System.

"Operating Standards" means the standards, specifications, policies, procedures and processes that apply to the operation of, maintenance of, rehabilitation of and capital improvements to, the Metered Parking System set forth in Schedule 2, including any plans submitted by the Concessionaire to the City as required therein. To the extent that any term or provision set forth in Schedule 2 or incorporated by reference in Schedule 2 conflicts with any term or provision specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision.

"Operator" has the meaning ascribed thereto in Section 3.3(a).

"Parking Enforcement" means the issuance of parking tickets or citations, and the processing and collection of payments related thereto, for violations of (i) the parking rules and regulations with respect to the Metered Parking Spaces and Residential Permits and (ii) other

Laws of the City with respect to the Metered Parking System and parking in general as set forth the Schedule of Parking Fines, in each case in accordance with the Enforcement Policies and Procedures set forth in the Operating Standards.

"Parking Enforcement Agreement" means any agreement entered between Concessionaire and the Enforcement Contractor for the provision of parking enforcement services.

"Parking Enforcement Revenue" means the revenues derived from the Parking Violation Fines, fees, related fines imposed by the court (other than actual court costs) and any other payments related to Parking Enforcement, including any convenience fee for the use of web-based and IVR-based payments.

"Parking Enforcement Revenue Adjustment" means (i) if the Parking Enforcement Revenue Decrease exceeds seven and one half percent (7.5%) of the amount set forth in Section 9.1(m), the amount that is the lesser of (a) the amount that the Parking Enforcement Revenue Decrease exceeds the seven and one half percent (7.5%) threshold and (b) forty percent (40%) of the amount set forth in Section 9.1(m) and (ii) if the Parking Enforcement Revenue Decrease is less than or equal to seven and one half percent (7.5%), zero.

"Parking Enforcement Revenue Decrease" means the amount, if any, by which the Parking Enforcement Revenue generated but not collected as of the Closing Date is less than the amount set forth in Section 9.1(m).

"Parking Violation Fine" means the fine established by the City as consideration for the violation of parking rules and regulations all as set forth in the Schedule of Parking Fines.

"Parking Taxes" means Taxes imposed on customers or users of the Metered Parking System by any Governmental Authority pursuant to any Tax imposed solely on the privilege of parking a motor vehicle on a public street in the City, but not including Taxes of general application such as a general sales tax or taxes applicable to both on-street and off-street parking.

"Party" means a party to this Agreement and "Parties" means both of them.

"Period of Operation" means, with respect to each Metered Parking Space, the Days and the period or periods of time during each Day that the City permits the parking of a motor vehicle in that Metered Parking Space and requires the payment of a Metered Parking Fee for use of that Metered Parking Space as set forth on Schedule 5.

"Period of Stay" means, with respect to each Metered Parking Space, the period or periods of time that the same motor vehicle may remain continuously parked in such Metered Parking Space as set forth on Section 1(b) of Schedule 5.

"Permanent Removal" has the meaning ascribed thereto in Section 7.2(c).

"Permanent Removal Payment" has the meaning ascribed thereto in Section 7.4.



"Permitted City Encumbrance" means, with respect to the Metered Parking System: (i) the Concessionaire Interest; (ii) any Encumbrance that is being contested, or being caused to be contested, by the City in accordance with Section 3.5(b) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other like Encumbrances arising in the ordinary course of business of the Metered Parking System or the City's performance of any of its rights or obligations hereunder, and either (A) not delinquent or (B) which are being contested, or are being caused to be contested, by the City in accordance with Section 3.5(b) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iv) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the Metered Parking System (or other similar reservation, right and restriction) or other defects and irregularities in the title to the Metered Parking System that do not materially interfere with the Metered Parking System Operations or the rights and benefits of the Concessionaire under this Agreement or materially impair the value of the Concessionaire Interest; (v) the police and regulatory powers of the State of Indiana with respect to State Roads; (vi) any right reserved to or vested in any Governmental Authority (other than the City) by any statutory provision or under common law (it being understood and agreed that nothing in this clause (vi) shall limit or otherwise affect the City's obligations or the Concessionaire's rights hereunder); (vii) any other Encumbrance permitted hereunder; (viii) any Encumbrances created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; (ix) any rights reserved to or vested in the City by any statutory provision (it being understood and agreed that nothing in this definition shall limit or otherwise affect the City's obligations or the Concessionaire's rights hereunder); and (x) any amendment, extension, renewal or replacement of any of the foregoing.

"Permitted Closure" has the meaning ascribed thereto in Section 7.6(c)(ii).

"Permitted Concessionaire Encumbrance" means, with respect to the Concessionaire Interest: (i) any Encumbrance that is being contested in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (ii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person, (B) any statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of the Metered Parking System Operations and either (A) not delinquent or (B) which are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Encumbrances arising in the ordinary course of business of the Metered Parking System or the Concessionaire's performance of any of its rights or obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iv) any right reserved to or vested in any Governmental Authority by any statutory provision or under common law; (v) any Collateral Assignment and any other Encumbrance permitted hereunder; (vi) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance,

social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Metered Parking System; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the City or any Person claiming through the City; and (viii) any amendment, extension, renewal or replacement of any of the foregoing.

"Person" means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

"Placard" means a valid placard issued by the City to an employee of the City, or any other Person, which allows such Person to be exempt from paying Metered Parking Fees.

"Pre-Paid Card" has the meaning ascribed thereto in Section 3.19(b).

"Present Value" means, as of any date of determination, the value of the applicable payments discounted by the Discount Rate.

"Property Taxes" means any ad valorem property Tax attributable to the Metered Parking System or the Concessionaire Interest.

"Quarter" means each calendar quarter of each Year of the Term.

"Rating Agency" means any of Standard & Poor's Corporation, Moody's Investors Service, Inc. or Fitch Investors Service, Inc. or any similar entity or any of their respective successors.

"Regular Rate Adjustment" means any revision in the Metered Parking Fee for a Metered Parking Space as set forth on Schedule 5.

"Replacement Letter of Credit" has the meaning ascribed thereto in Section 16.3(c).

"Representative" means, with respect to any Person, any director, officer, employee, official, partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, Contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its "Representative."

"Required Coverages" has the meaning ascribed thereto in Section 13.1.

"Reserved Metered Parking Revenue" means any Metered Parking Revenue derived from any Reserved Metered Parking Space.

"Reserved Metered Parking Space" has the meaning ascribed thereto in Section 7.7(a).

"Residential Permits" means residential parking permits for on-street parking issued in accordance with Section 3.2(f).

"Residential Permits Fees" means all fees charged, collected and retained by the Concessionaire in respect of the issuance of Residential Permits in accordance with the Operating Standards.

"Restoration" has the meaning ascribed thereto in Section 13.3(a).

"Restoration Funds" has the meaning ascribed thereto in Section 13.3(a).

"Reversion Date" means the Business Day immediately following the End Date.

"Schedule" means a schedule attached hereto and incorporated in this Agreement, unless otherwise expressly indicated by the terms of this Agreement.

"Schedule of Parking Fees" means the fee schedule for Metered Parking Spaces set forth in Section 1 of Schedule 5.

"Schedule of Parking Fines" means the fine schedule for the violations of parking rules and regulations with respect to the Metered Parking Spaces and Residential Permits set forth in Section 4 of Schedule 5.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Special Event" means any event that (i) does not occur annually or more frequently than annually; (ii) has an expected average daily attendance of more than seventy-five thousand (75,000) Persons; and (iii) in the reasonable judgment of the City, requires the Temporary Closure of Metered Parking Spaces in connection with such event, including those events listed on Schedule 10.

"State Roads" means those roadways located in the City that are owned by, or are under the jurisdiction of, the State of Indiana.

"Subscribed Equity Amount" means, as of any date of determination, all outstanding contributed, unreturned and non-recoverable amounts paid to the Concessionaire by its shareholders, members, or Affiliates by way of (a) subscription for shares in the capital of the Concessionaire; or (b) the making of loans to the Concessionaire, in each case, with respect to the Concessionaire Interest.

"System Revenue" means for each Year, all Metered Parking Revenue (including any Additional Metered Parking Revenue) plus Concessionaire Parking Enforcement Revenue generated and collected by the Concessionaire in such Year but excluding all Reserved Metered Parking Revenue for such Year and, for the avoidance of doubt, any Concession Compensation received by the Concessionaire during such Year.

"Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost,

stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

"Technological and Operational Impact" means, with respect to Metered Parking Spaces in Zone 1, Zone 2 and Zone 4 only, two percent (2%).

"Temporary Closure" means any interruption to, or any suspension of, Metered Parking System Operations by the City or, for purposes of Section 7.6(b), by any other Person with respect to a Metered Parking Space during the Period of Operation of such Metered Parking Space, including with respect to street closures, the closure of a street to vehicular traffic, emergency parking bans, weather related closures, sidewalk closures related to building construction, sidewalk construction or repair, street construction or repair, utility work, the operation of a Valet Parking Service and other activities; provided, however, an interruption or suspension pursuant to those Special Events listed on Schedule 10 shall not be considered a Temporary Closure or result in any Concession Compensation, except as otherwise set forth in Section 7.6(d).

"Temporary Closure Allowance" means, with respect to a particular Metered Parking Space and a particular Year, six percent (6%) of the number of Days during such Year that such Metered Parking Space was a designated Metered Parking Space for Metered Parking System Operations during the Days on which the Concessionaire would normally be permitted to collect Metered Parking Revenue and is not otherwise paid the Temporary Closure Fee pursuant to Section 7.6, based upon the assumption that such Metered Parking Space will continue to be a Metered Parking Space for the remainder of such Year.

"Temporary Closure Fee" means with respect to (i) a Temporary Closure due to the operation of a Valet Parking Service by any Person with a permit listed on Schedule 1, a fee in an amount equal to \$1.50 per Day for the meters set forth in such permits for Temporary Closures of such Metered Parking Spaces for a period of five (5) Years after the Closing Date (provided, however that for the permits listed as contracts 4 through 9 in Schedule 1, each restaurant establishment may only have up to three (3) Metered Parking Spaces that enjoy the rate described in sub-section (i)); (ii) a Temporary Closure due to the operation of a Valet Parking Service by any Person that does not have a permit as listed on Schedule 1 and by such Persons with permits listed on Schedule 1, after five (5) Years from the Closing Date, a fee in an amount equal to \$7.50 per Day for Temporary Closures of Metered Parking Spaces in Zone 1, Zone 2, Zone 3 and Zone 4; and (iii) any other Temporary Closure, a fee payable by any Person, including the City, in an amount equal to (a) \$20 per Day for Temporary Closures of Metered Parking Spaces in Zone 1 and Zone 4, and (b) \$15 per Day for Temporary Closures of Metered Parking Spaces in Zone 2 and Zone 3, in the case of each of (ii) and (iii), as Adjusted for Inflation for each Year, in each case, rounded up to \$1 increments of any such increase.

"Term" means the term of the concession and franchise referred to in Section 2.1.

"Termination Damages" has the meaning ascribed thereto in Section 14.2(a).

"Third Party Claim" means any Claim asserted against an Indemnified Party by any Person who is not a Party or an Affiliate of such a Party.

"Time of Closing" means 10:00 a.m. eastern time zone on the Closing Date or such other time on that date as the City and the Concessionaire agree in writing that the Closing shall take place.

"Transaction" has the meaning ascribed thereto in Section 2.1.

"Transfer" means to sell, convey, assign, lease, sublease, mortgage, encumber, transfer or otherwise dispose of.

"Transferee" means any Person who obtains the Concessionaire Interest pursuant to a Transfer.

"Utilization Rate" means, with respect to a Metered Parking Space and during a particular measurement period, the percentage obtained by dividing the Metered Parking Revenue derived from the operation of such Metered Parking Space during such measurement period by the Full Utilization Amount of such Metered Parking Space for such measurement period.

"Valet Parking Service" means a valet parking service operated by a retail establishment or any other Person after 5:00 p.m.

"Year" means the calendar year.

"Zone" or "Zones" has the meaning ascribed thereto in Schedule 5.

**Section 1.2. Number and Gender.** In this Agreement words in the singular include the plural and vice versa and words in one gender include all genders.

**Section 1.3. Headings.** The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

**Section 1.4. References to this Agreement.** The words "herein," "hereby," "hereof," "hereto" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words "Article," "Section," "paragraph," "sentence," "clause," "Schedule" and "Exhibit" mean and refer to the specified article, section, paragraph, sentence, clause, schedule or exhibit of or to this Agreement.

**Section 1.5. References to Any Person.** A reference in this Agreement to any Person at any time refers to such Person's permitted successors and assigns.

**Section 1.6. Meaning of Including.** In this Agreement, the words "include," "includes" or "including" mean "include without limitation," "includes without limitation" and "including

without limitation," respectively, and the words following "include," "includes" or "including" shall not be considered to set forth an exhaustive list.

**Section 1.7. Meaning of Discretion.** In this Agreement, unless otherwise qualified or limited, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person.

**Section 1.8. Meaning of Notice.** In this Agreement, the word "notice" means "written notice," unless specified otherwise.

**Section 1.9. Meaning of Promptly.** In this Agreement, the word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances.

**Section 1.10. Consents and Approvals.** Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

**Section 1.11. Trade Meanings.** Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

**Section 1.12. Laws.** Unless specified otherwise, a reference to a Law is considered to be a reference to (i) such Law as it may be amended, modified or supplemented from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of the City to enact, administer, apply and enforce any Law, subject to the right of the Concessionaire to claim or receive any compensation or other relief otherwise provided in this Agreement as a result of the enactment, administration, application or enforcement of any Law by the City.

**Section 1.13. Currency.** Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

**Section 1.14. Generally Accepted Accounting Principles.** All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with generally accepted accounting principles in the United States of America, consistently applied.

**Section 1.15. Calculation of Time.** For purposes of this Agreement, a period of Days shall be deemed to begin on the first Day after the event that began the period and to end at 5:00 p.m. (Eastern Daylight Time) on the last Day of the period. If, however, the last Day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern Daylight Time) on the next Business Day.

### **Section 1.16. Approvals, Consents and Performance by the City.**

- (a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the City of or to any action, Person, Document, or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (1) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as reasonably determined by the City, (2) clearly set forth the matter in respect of which such approval or consent is being sought, (3) form the sole subject matter of the correspondence containing such request for approval or consent, and (4) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the City); (iii) the City shall, within the time period set forth herein (or if no time period is provided, within forty-five (45) Days) after the giving of a notice by the Concessionaire requesting an approval or consent, advise the Concessionaire by written notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the City acting reasonably, of the information or documentation provided by the Concessionaire; *provided, however* that if the City fails to provide such written notice to the Concessionaire within the designated time period, the City shall be deemed to have consented to or approved such request; (iv) if the responding notice mentioned in clause (iii) of this Section 1.16(a) indicates that the City does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of the City set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 1.16 shall again apply until such time as the approval or consent of the City is finally obtained; and (v) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 19, and if the disapproval or withholding of consent mentioned in Section 1.16(a)(ii) is subsequently determined pursuant to Article 19 to have been improperly withheld, conditioned or delayed by the City, such approval or consent shall, unless otherwise be determined pursuant to Article 19, be deemed to have been given on the date on which such approval or consent was originally required.
- (b) *Authority of the City.* Wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the City, such act may be taken or performed or approval or consent may be given by the Mayor or the Corporation Counsel of the City (or if that office is vacant, the Controller of the City), without further action by the City Council of the City and the Concessionaire may rely thereon in all respects.

- (c) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an approval or consent by the City is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without first obtaining a further Approval in accordance with the provisions of this Section 1.16.

**Section 1.17. Incorporation of Schedules and Exhibit.** The following attached Schedules and Exhibit are made a part of this Agreement:

Schedule 1	Metered Parking System Contracts
Schedule 2	Operating Standards
Schedule 3	Metered Parking System Assets
Schedule 4	Methodology for Calculating Certain Concessionaire Compensation
Schedule 5	Schedule of Parking Fees and Schedule of Parking Fines
Schedule 6	Initial Permanent Removal Payment
Schedule 7	Form of Legal Opinion of Counsel to the City
Schedule 8	Form of Legal Opinion of Counsel to the Concessionaire
Schedule 9	Financial Information
Schedule 10	Special Events
Exhibit A	Metered Parking System Ordinance

In the event of any conflict between the terms of this Agreement and the terms of the Schedules or the Exhibits, the terms of this Agreement shall control.

## **ARTICLE 2**

### **THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS**

**Section 2.1. Grant of Concession.** Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing, (a) the Concessionaire shall pay the City (i) an upfront payment of \$\_\_\_\_\_ in cash (the "Closing Consideration") in consideration for signing the Agreement with the Concessionaire, and (ii) the City Metered Parking Revenue at the times and on the terms set forth herein, and (b) the City shall (i) grant the Concessionaire the exclusive right, concession and franchise for and during the term (the "Term") commencing on the Closing Date and expiring at 11:59 p.m. on the fiftieth (50th) anniversary of the Closing Date (or such later date as may be required to effect a Delay Event Remedy but subject to earlier termination as provided in this Agreement) to provide Metered Parking Services, and in connection therewith (A) to use, operate, manage, maintain and rehabilitate the Metered Parking System; and (B) to collect and retain the Metered Parking Revenue and the Concessionaire Parking Enforcement Revenue; and (ii) assign, transfer and otherwise convey to the Concessionaire by bill of sale the Metered Parking System Assets, free and clear of any Encumbrances (other than Permitted City Encumbrances) and the Concessionaire shall accept each such grant, assignment, transfer and conveyance (collectively,



the "Transaction"). The Parties acknowledge and agree that no interest in real estate of any kind (whether in the form of ownership, leasehold interest or otherwise) is conveyed to the Concessionaire pursuant to or in connection with this Agreement.

## **Section 2.2. Closing.**

- (a) Subject to the satisfaction of all the conditions precedent contained in Section 2.4 or the waiver by the Parties of any unsatisfied condition, the closing of the Transaction (the "Closing") shall take place on the first Business Day after the date that is ninety (90) Days after the date of this Agreement, or such other date agreed to in writing by the Concessionaire and the City (the "Closing Date"). The Closing shall be held at the offices of Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana, 46282 or such other place agreed to in writing by the City and the Concessionaire. At the Time of Closing, the Concessionaire shall deliver or cause to be delivered to the City same-day funds by wire transfer in the amount of the Closing Consideration (less (i) the amount of any Cash Deposit, plus all interest thereon, that the Concessionaire previously paid pursuant to Section 2.3(a) in accordance with Section 2.3(c), (ii) the Interest Rate Adjustment and (iii) the Parking Enforcement Revenue Adjustment). Upon receipt of the funds described in the preceding sentence, the City shall immediately cancel and return the Closing LOC, if any, in accordance with the Concessionaire's instructions.
- (b) *Assumed Liabilities.* The Concessionaire agrees to assume and discharge or perform when due, all debts, liabilities and obligations whatsoever relating to the Metered Parking System or the Metered Parking System Operations that occur, arise out of or relate to, or are based on facts or actions occurring, during the Term, but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by the City of any covenant, representation or warranty set forth in this Agreement (collectively, the "Assumed Liabilities"); provided, however, that the Assumed Liabilities shall not include, and the City shall perform or cause to be performed and discharge or cause to be discharged as and when due, any debts, liabilities and obligations (i) with respect to the City's obligations under this Agreement, (ii) arising out of Metered Parking System Operations (including with respect to any Metered Parking System Contracts) prior to the Time of Closing and those not assigned to the Concessionaire, (iii) under any Environmental Law, other than to the extent caused by the Concessionaire's ownership or operation, or by the condition of, the Metered Parking System during the Term; (iv) under any collective bargaining agreement or related labor agreement; and (v) with respect to any pension or other retiree benefit or medical plan (collectively, the "Excluded Liabilities").
- (c) *Interest Rate Adjustment.* Using the five (5)-year, mid-market LIBOR swap rate in the "Money & Investing, Borrowing Benchmarks" section of The Wall Street Journal, from the close of business on the Business Day immediately prior to the Bid Date (as published on the Bid Date) through the close of business on the Business Day immediately prior to the City Council Approval Date (as published

on the Business Day immediately following the City Council Approval Date), the amount of the Closing Consideration will be decreased by five one hundredths of one percent (5/100 of 1%) for every one basis point increase in the five (5)-year, mid-market LIBOR swap rate (the "Interest Rate Adjustment"); provided that any increase of 25 basis points or less shall not result in an Interest Rate Adjustment; provided, further, however that any Interest Rate Adjustment due to an increase in the five (5)-year, mid-market LIBOR swap above 25 basis points shall include in its calculation the increase of the first 25 basis points and any increase thereafter. For the avoidance of doubt, during the same time period, the amount of the Closing Consideration shall remain unchanged for any decrease in the five (5)-year, mid-market LIBOR swap rate.

### **Section 2.3. Deposit.**

- (a) The City acknowledges receipt from the Concessionaire of cash (the "Cash Deposit") or one or more Letters of Credit with a term of at least one hundred eighty (180) Days from the date hereof (the "Closing LOC"), in an aggregate amount equal to the greater of Five Million Dollars (\$5,000,000) or seven and one half percent (7.5%) of the Closing Consideration, to be held by the City for the sole purpose described in Section 2.3(b). The City shall deposit any Cash Deposit with the Escrow Agent, which shall invest such amount in Eligible Investments pending the Closing. All fees owed to the Escrow Agent will be paid out of the Cash Deposit. The Concessionaire may provide a combination of a Cash Deposit and Closing LOC to comply with the requirements of this Section 2.3(a), in which case the relevant provisions of this Agreement related to a Cash Deposit and to a Closing LOC, including the rights of the Parties related thereto, shall be construed to apply to both forms of security.
- (b) If the City terminates this Agreement pursuant to Section 2.4(d)(iv), including as a result of the failure of the Concessionaire to pay the Closing Consideration at Closing in accordance with the terms hereof so long as said failure is not the result of the City's actions or omissions, then the City shall be entitled to (i) retain any Cash Deposit and all interest earned thereon or, (ii) without notice to the Concessionaire, immediately draw the full amount of the Closing LOC upon presentation of a sight draft and a certificate confirming that the City has the right to draw under the Closing LOC in the amount of such sight draft, and the City shall be entitled to retain all of the proceeds of the Closing LOC, in each case as the sole remedy or right of the City against the Concessionaire hereunder (provided that this limitation shall not apply in the event of fraud or intentional misrepresentation of the Concessionaire); provided, however, that if this Agreement is terminated for any other reason, the City shall return any Cash Deposit and all interest earned thereon and/or return the Closing LOC to the Concessionaire marked cancelled, in each case, in accordance with the Concessionaire's reasonable instructions and immediately following any such termination. The right of the City to retain any Cash Deposit and all interest earned thereon or draw on the Closing LOC is intended to be, and shall constitute, liquidated damages to compensate the City for the cost of foregoing alternative

opportunities and for other costs incurred by the City in reliance on the Concessionaire's agreement to enter into the transaction contemplated hereunder, and full retention of any Cash Deposit and all interest earned thereon and full payment of the entire draw on the Closing LOC to the City shall terminate all other rights and remedies of the City with respect to the Concessionaire. The Parties acknowledge that the damages suffered by the City as a result of such termination would be impossible to ascertain and that the combined amount of any Cash Deposit and all interest earned thereon and the Closing LOC is a reasonable estimate thereof and is not intended as a penalty.

- (c) At Closing, upon the satisfaction of the conditions set forth in Sections 2.4(a), 2.4(b) and 2.4(c), the Concessionaire shall be entitled to apply the Cash Deposit (including any accrued interest as a credit against the Closing Consideration.

#### **Section 2.4. Conditions Precedent; Termination.**

- (a) *Conditions for the Benefit of the Concessionaire.* The Concessionaire shall be obligated to complete the Closing in accordance with the terms hereof only if each of the following conditions has been satisfied in full at or before the Time of Closing, unless waived by the Concessionaire: (i) the representations and warranties of the City set forth in Section 9.1 shall be true and correct in all material respects on and as of the date hereof and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except that representations and warranties that by their terms speak only as of the date of this Agreement or some other date need to be true and correct only as of such date; (ii) the City shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the City at or prior to the Time of Closing; (iii) the Schedule of Parking Fees and the Schedule of Parking Fines shall be in full force and effect; (iv) the City shall have delivered to the Concessionaire a legal opinion of counsel to the City, in substantially the form attached hereto as Schedule 7; (v) the City shall have executed and delivered the consents and estoppel certificates contemplated by Section 10.2; (vi) the City Council shall have adopted Metered Parking System Ordinance; (vii) there shall not have occurred a material casualty loss, destruction or damage to the Metered Parking System; (viii) the City shall have granted all Authorizations necessary for the performance of the obligations of the Concessionaire under this Agreement, including with respect to the Metered Parking System Operations; (ix) the City shall have delivered to the Concessionaire all consents and estoppel certificates in respect of the Metered Parking System Contracts necessary for the operation of the Metered Parking System and the assignment to the Concessionaire to the extent such assignment has been requested by the Concessionaire; (x) the City shall have delivered all Information related to Parking Enforcement Revenue that has been generated but not collected as of the Time of Closing, including any Information used by vendors or third party suppliers of the City to collect Parking Enforcement Revenue, including contact information for the delinquent ticket and citation recipients; (xi) no event shall have occurred that would have constituted an

Adverse Action or City Default had it occurred during the Term; (xii) no challenge to the validity or enforceability of this Agreement or the City's right or authority to enter into this Agreement or consummate the Transaction is filed and pending with any court or other tribunal; and (xiii) there are at least 3,649 Metered Parking Spaces within the Metered Parking System at and as of the Time of Closing plus an additional 130 authorized Metered Parking Spaces as set forth on Schedule 3. The City hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience. As used in this Section 2.4(a)(vii) and in Section 2.5(i), a material casualty loss, destruction or damage to the Metered Parking System means the casualty, loss, damage or destruction of not less than five percent (5%) of the Metered Parking Spaces such that those Metered Parking Spaces are not available as spaces for parking motor vehicles and collecting Metered Parking Fees.

- (b) *Conditions for the Benefit of the City.* The City shall be obligated to complete the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by the City: (i) the representations and warranties of the Concessionaire in Section 9.2 shall be true and correct in all material respects on and as of the date hereof at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except that representations and warranties that by their terms speak only as of the date of this Agreement or some other date need be true and correct only as of such date; (ii) the Concessionaire shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the Concessionaire at or prior to the Time of Closing (including the failure of the Concessionaire to pay the Closing Consideration at Closing in accordance with the terms hereof); and (iii) the Concessionaire shall have delivered to the City a legal opinion of counsel to the Concessionaire, in substantially the form attached hereto as Schedule 8.
- (c) *Mutual Conditions.* The City and the Concessionaire shall be obligated to complete the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by both the City and the Concessionaire: (i) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the consummation of the Transaction; and (ii) there shall be no action taken (including the pendency of any review or proceeding), or any Law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction that, in any such case, has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Governmental Authority conditioning or restricting the consummation of the Transaction in a manner that would impose a material

impairment on the Transaction or makes the consummation of the Transaction illegal.

(d) *Termination.* This Agreement may be terminated at any time prior to the Closing:

(i) by mutual consent of the City and the Concessionaire in a written instrument;

(ii) by either the City or the Concessionaire, upon notice to the other Party, if any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction, and such order, decree, ruling or other action has become final and nonappealable; provided; however, that the right to terminate this Agreement under this Section 2.4(d)(ii) shall not be available to any Party whose failure to comply with any provision of this Agreement or other conduct has been the cause of, or results in, such action;

(iii) by the Concessionaire, upon notice to the City, if any condition set forth in Section 2.4(a) remains unsatisfied as of the Time of Closing; provided, however, that the Concessionaire shall not have the right to terminate this Agreement under this Section 2.4(d)(iii) if the Concessionaire's failure to comply with any provision of this Agreement or other conduct has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or

(iv) by the City, upon notice to the Concessionaire, if any condition set forth in Section 2.4(b) remains unsatisfied as of the Time of Closing; provided, however, that the City shall not have the right to terminate this Agreement under this Section 2.4(d)(iv) if the City's failure to comply with any provision of this Agreement or other conduct has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied.

(e) *Effect of Termination.* In the event of termination of this Agreement by either the City or the Concessionaire as provided in Section 2.4(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the City or the Concessionaire or their respective Representatives, except as set forth in Section 2.3(b), this Section 2.4(e), Article 12, Article 19 and Article 20. In the event that the Concessionaire terminates this Agreement pursuant to Section 2.4(d)(iii), the City shall pay the Concessionaire, within five (5) Business Days of such termination, an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000). In the event of termination pursuant to Section 2.4(d)(i), (ii) or (iii), the Cash Deposit and all investment earnings accrued thereon shall be paid to the Concessionaire or the Closing LOC shall be returned undrawn to the Concessionaire marked canceled, as applicable.

## **Section 2.5. Covenants.**

(a) *Cooperation.* During the Closing Period, the Parties shall cooperate with each other, and shall use all reasonable efforts, in order to permit the Closing to be consummated on the Closing Date.

- (b) *Reasonable Efforts.* During the Closing Period, each Party shall use all reasonable efforts (i) to take, or cause to be taken, all actions necessary to comply promptly with all requirements under this Agreement and of Law which may be imposed on such Party to consummate the Transaction as promptly as practicable, including making any necessary filings, and (ii) to obtain (and to cooperate with the other Party to obtain) any Consent of any Governmental Authority or any other public or private third party which is required to be obtained or made by such Party in connection with the consummation of the Transaction. Each Party shall promptly cooperate with and promptly furnish information to the other Party at such other Party's reasonable request in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.
- (c) *Injunctions.* If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Time of Closing which would prohibit or materially restrict, hinder or adversely affect the Closing, each Party shall use all reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction or order, in each case as promptly as possible and, in any event, prior to the Time of Closing; provided, that the Concessionaire shall not be obligated to take any action pursuant to this Section 2.5(c) that would result in the incurrence of any legal or other costs or expenses by the Concessionaire, and any such costs incurred by the Concessionaire at the direction or with the consent of the City shall be borne by the City.
- (d) *Operation of the Metered Parking System.* During the Closing Period, the City shall operate the Metered Parking System in the ordinary course in a manner consistent with past practice, which shall include (i) using all reasonable efforts to preserve the goodwill of the Metered Parking System and to maintain good business relationships with customers, suppliers and other Persons having business dealings with the Metered Parking System, (ii) maintaining the Metered Parking System Assets in normal operating condition and repair in accordance with past practice (ordinary wear and tear excepted), (iii) not disposing of the Metered Parking System Assets, (iv) performing (or cause to be performed) in all material respects all of the City's obligations under the Metered Parking System Contracts, (v) not incurring any indebtedness or Encumbrances on the Metered Parking Systems Assets that are not satisfied by the Closing Date, and (vi) causing the Metered Parking System to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings and which are disclosed to Concessionaire prior to the execution of this Agreement or, if occurring during the Closing Period, within three (3) Days of the City becoming aware of the non-compliance but in no event less than three (3) Days prior to Closing), all to the end that the Metered Parking System as a going concern shall be unimpaired and delivered to the Concessionaire at the Time of Closing in a condition not materially worse than the condition as of the date hereof; provided, however, that the City shall not amend, modify, renew, execute or otherwise negotiate any

contracts relating to the Metered Parking System or the Metered Parking System Operations after the date hereof up to the Time of Closing without the prior written approval of the Concessionaire. The City, shall, up to and including the Time of Closing, be entitled to all of the cash or cash equivalents in or generated by the Metered Parking System in respect of the Metered Parking Revenue. Without limiting the foregoing, the City shall not terminate, amend, modify or agree to a waiver of the terms of any Authorization related to the Metered Parking System during the Closing Period without the Concessionaire's consent, which shall not be unreasonably withheld, conditioned or delayed.

- (e) *Parking Enforcement Revenues.* During the Closing Period, the City shall pursue the collection of Parking Enforcement Revenue in the ordinary course in a manner consistent with past practice and shall not use any efforts beyond those reasonably consistent with such past practice in respect of collection of such Parking Enforcement Revenue. During the Closing Period, the City shall be entitled to retain all cash or cash equivalents collected by the City in respect of Parking Enforcement Revenue; provided, however that the Concessionaire shall be entitled to any Parking Enforcement Revenue generated but not collected prior to the Closing Date.
- (f) *Metered Parking System Contracts.* The Metered Parking System Contracts are listed on Schedule 1. At least thirty (30) Days prior to the Closing Date, the Concessionaire shall designate any such Metered Parking System Contracts as Metered Parking System Contracts to be assigned to the Concessionaire by the City on the Closing Date. Following the Concessionaire's designation, the City shall designate any remaining Metered Parking System Contracts that are not to be assigned to the Concessionaire as Metered Parking System Contracts to be retained by the City following the Closing Date (so long as such retained Metered Parking System Contracts do not adversely affect the Concessionaire or the Metered Parking System or otherwise interfere with the operation of the Metered Parking System (or any of the rights or remedies of the Concessionaire hereunder and should not bind the Concessionaire or the Metered Parking System to any obligations)). All other Metered Parking System Contracts shall be terminated by the City, effective at the Time of Closing. Any liability under or related to any Metered Parking System Contract retained by the City following the Closing Date or terminated by the City on the Closing Date (including any liability resulting from the termination thereof), and any liability under or related to any Metered Parking System Contract that is assigned to the Concessionaire on the Closing Date attributable to periods prior to the effectiveness of the assignment thereof to the Concessionaire, shall be solely for the account of the City.
- (g) *Disclosure of Changes.* During the Closing Period, each Party shall immediately disclose in writing to the other Party any matter which becomes known to it which is inconsistent in any material respect with any of the representations or warranties contained in Article 9. No such disclosure shall be deemed to change any representation or warranty, cure any misrepresentation or breach thereof or

affect the inability to make such a representation and warranty for purposes of Section 2.4 or Article 12.

- (h) *Access to Information.* During the Closing Period, but subject to confidentiality obligations binding on the City with respect to any Person (provided that the City has disclosed to the Concessionaire the existence of the applicable Document that is subject to such confidentiality limitation in order to enable the Concessionaire to evaluate the materiality and significance of the lack of disclosure based on such limitations) the City shall (i) give the Concessionaire and its Representatives reasonable access during normal business hours (or after normal business hours if reasonably required) and on reasonable notice to the Metered Parking System, subject to the City's policies and regulations regarding safety and security and any other reasonable conditions imposed by the City, (ii) permit the Concessionaire and its Representatives to make such inspections as they may reasonably request and (iii) to furnish the Concessionaire and its Representatives with such financial and operating data and other information that is available with respect to the Metered Parking System as they may from time to time reasonably request. The Concessionaire shall hold and will instruct its Representatives to hold in strict confidence all Documents and information concerning the Metered Parking System to the extent and in accordance with the terms and conditions of that certain confidentiality agreement entered into between the City and the Concessionaire in connection with the Transaction on April 3, 2010 (the "Confidentiality Agreement") and will cause its Representatives to enter into a confidentiality agreement in substantially the same form as the Confidentiality Agreement, or cause its Representatives to join the Confidentiality Agreement, in connection with the Transaction, provided that Concessionaire shall be responsible for any damages incurred by the City for such Representatives' breach of such confidentiality agreement unless otherwise provided therein. Prior to the Closing Date, the City shall request, and shall use its best efforts to cause to be delivered to the Concessionaire, all Information in the possession of vendors and third-party suppliers related to the Metered Parking System or the Metered Parking System Operations, including all relevant invoices from such vendors and third-party supplier for the previous twenty-four (24) months and any operational or financial Information stored in an electronic database that can be exported into a transferable file. After the Closing Date, the Concessionaire shall, at the request of the City, in connection with claims or actions brought by or against third parties based upon events or circumstances concerning the Metered Parking System, (A) provide reasonable assistance in the collection of information or Documents and (B) make the Concessionaire's employees available when reasonably requested by the City.
- (i) *Transition.* During the Closing Period, the Parties shall cooperate with each other to ensure the orderly transition of control, custody, operation, management, maintenance of, and the right to charge and collect Metered Parking Revenue and Parking Enforcement Revenue in connection with, the Metered Parking System at the Time of Closing. The City shall take all efforts as may be necessary in order to ensure such orderly transition and provide to the Concessionaire with all



Information and Documents related to the Metered Parking System Operations, including causing T2 Systems, Inc. to provide the Concessionaire with a data conversion file of parking enforcement data, including outstanding Parking Enforcement Revenue data, and to participate in practice trials with the Concessionaire during the Closing Period. At the request of the Concessionaire, the City will provide to the Concessionaire, for up to six (6) months following the Closing Date, the services of any employee whose primary responsibilities relate to the Metered Parking System. All such services shall be provided for an amount equal to the actual cost to the City (including employment costs and related overhead expenses allocable to such employees, as reasonably determined by the City), which amount shall be billed to the Concessionaire as soon as reasonably practicable following the end of each month and shall be payable by the Concessionaire within thirty (30) Days of receipt of any such statement, and upon such other reasonable terms and conditions as the City and the Concessionaire may agree.

- (j) *Casualty Loss Prior to Closing.* If prior to the Time of Closing, a material casualty loss, destruction or damage to any part of the Metered Parking System has occurred and this Agreement has not been terminated under Section 2.4(d), then the City shall either (i) promptly and diligently repair and rebuild the affected parts of the Metered Parking System to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage or (ii) authorize the Concessionaire to repair the Metered Parking System and assign to the Concessionaire all insurance and other proceeds (if any) payable by third-party insurers or other third parties in respect of such casualty loss, destruction or damage and enforce (with the cooperation of the Concessionaire) all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers; provided that if no insurance exists or such insurance proceeds are not sufficient to repair and rebuild the affected parts of the Metered Parking System to its prior condition, then the City shall reimburse the Concessionaire for that amount representing the difference between the cost to repair and the amount of any insurance proceeds.
- (k) *Policies of Insurance.* During the Closing Period, the City shall continue in force all applicable policies of insurance maintained by the City in respect of the Metered Parking System. At the Time of Closing, all such policies of insurance shall terminate and the Concessionaire shall be responsible for obtaining insurance for the Metered Parking System in accordance with the terms hereof.
- (l) *Damage or Destruction.* During the Closing Period, the City shall not perform any act or fail to perform any act, which would cause material damage to, or the destruction of, the Metered Parking System that is reasonably expected to result in a Material Adverse Effect. For the avoidance of doubt whether or not sufficient insurance is in place shall be disregarded for the purposes of this Section 2.5(l).

- (m) *Operational Matters.* During the Closing Period, the City shall reasonably consult with the Concessionaire with respect to any material matters relating to the operation or maintenance of the Metered Parking System by the City.

**Section 2.6. Intended Treatment for Federal and State Income Tax Purposes.** This Agreement is intended for United States federal and state income Tax purposes to be a sale of the Metered Parking System and the Metered Parking System Assets to the Concessionaire and the grant to the Concessionaire of a right to collect and retain the Metered Parking Revenue and the Concessionaire Parking Enforcement Revenue for the duration of the Term as provided for in this Agreement. Payments made by the City to the Concessionaire in connection with Compensation Events shall for United States federal and state income tax purposes be deemed to be an adjustment to the Consideration for such sale of the Metered Parking System (but not the Metered Parking System Assets) and the grant of the right to collect and retain the Metered Parking Revenue and the Concessionaire Parking Enforcement Revenue.

**Section 2.7. Closing Deliveries.** At the Time of Closing, each Party shall execute and deliver all existing assets, agreements, bills of sale, assignments, endorsements, instruments, Information and Documents that are reasonably necessary in the opinion of the other Party to effect the Transaction, perform the obligations hereunder and conduct the Metered Parking System Operations in accordance with the terms hereof (in form and substance that are reasonably satisfactory to such other Party).

### **ARTICLE 3 TERMS OF THE CONCESSION**

#### **Section 3.1. Right to Use and Present Condition.**

- (a) *Right to Use.* The City agrees that, subject to the City's remedies upon a Concessionaire Default, the Concessionaire shall, at all times during the Term, be entitled to and shall have the use of the Metered Parking System and the rights and privileges granted to the Concessionaire hereunder, subject to the provisions contained in this Agreement. The City and the Concessionaire acknowledge that the Concessionaire's rights to use the Metered Parking System, to collect and retain the Metered Parking Revenue and the Concessionaire Parking Enforcement Revenue are subject to the right of the City, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the Metered Parking System is used and operated as required by this Agreement. The City shall, at all times during the Term, defend (i) its lawful right to impose fees and charges for the privilege of parking motor vehicles and motorcycles in Metered Parking Spaces and to impose and collect fines for violations of parking rules and regulations related to Metered Parking Spaces and (ii) the rights granted to the Concessionaire hereunder, or any portion thereof, against any Person claiming any interest adverse to the City or the Concessionaire in the Metered Parking System, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Concessionaire, its Affiliates or their respective Representatives.

- (b) *Present Condition.* Except with respect to the completion of any repairs or restoration by the City pursuant to Section 2.5(i), and except as specifically set forth in Section 4.3 and Section 9.1, the Concessionaire understands, agrees and acknowledges that the Concessionaire (i) by the execution of this Agreement, agrees to accept the Metered Parking System "AS IS" at the Time of Closing and (ii) has inspected the Metered Parking System and is aware of its condition and acknowledges that the City neither has made nor is making any representation or warranty, express or implied, regarding the condition of the Metered Parking System (or any part thereof) or its suitability for the Concessionaire's proposed use, except for representations explicitly provided in Section 9.1.

### **Section 3.2. Metered Parking System Operations.**

- (a) *Use.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, (i) be responsible for all aspects of the Metered Parking System Operations, and (ii) cause the Metered Parking System Operations to be performed in accordance with the provisions of this Agreement (including the Operating Standards) and applicable Law. The Concessionaire shall, at all times during the Term, cause the Metered Parking System to be continuously operational for use during the applicable Periods of Operation by all members of the public except that the Concessionaire shall not be obligated to conduct Metered Parking System Operations with respect to a Metered Parking Space (A) during any period of time during which the City has suspended Metered Parking System Operations with respect to such Metered Parking Space including any suspension resulting from a Temporary Closure, (B) as specifically permitted under this Agreement, including any Temporary Closure requested by a third party, (C) as required by applicable Law or by any Governmental Authority, (D) as necessary to comply with any other requirement of this Agreement (including closures related to the performance of capital improvements or maintenance or repair activities as required by the Operating Standards), (E) as necessary for temporary closures required to address emergencies, public safety, temporary events or closures undertaken to maintain the public way or (F) as necessary to perform maintenance or repairs of the Metering Devices.
- (b) *Costs and Expenses.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, pay or cause to be paid all costs and expenses relating to the Metered Parking System Operations as and when the same are due and payable.
- (c) *RESERVED*
- (d) *Right of Entry and Access to the Public Way.* The City hereby grants to the Concessionaire and its Representatives the right to enter upon, in, under, over and across the streets, alleys, sidewalks in the public way, all to such extent and at such times as shall be necessary or desirable for the Concessionaire to access the Metered Parking System (including the Metering Devices and all supporting structures and appurtenances thereto) in order to conduct Metered Parking System

Operations, including operating, maintaining, inspecting, repairing and managing Metered Parking System properties, constructing, installing, replacing, testing, dismantling and removing Metering Devices and all supporting structures and appurtenances thereto, interconnecting the same to any electric utility, telephonic or other communication lines, collecting any Metered Parking Revenue and any Concessionaire Parking Enforcement Revenue, and installing monitoring or observation technology or equipment reasonably necessary for Metered Parking System Operations. The rights granted to the Concessionaire under this Section 3.2(d) do not create a priority in favor of the Concessionaire over any other user of the public way and are subject to the Operating Standards and all provisions of Law, including applicable City permit requirements, relating to the conduct of a private business or franchise in the public way

(e) *Enforcement Policies and Procedures.*

(i) The Concessionaire (through the Enforcement Contractor and/or the Enforcement Sub-Contractor) and the City's designated law enforcement officers shall have the exclusive right and responsibility, in accordance with this Agreement, to administer Parking Enforcement.

(ii) The Concessionaire and the City shall cooperate to establish, maintain and undertake the Enforcement Policies and Procedures. The City shall not change the Enforcement Policies and Procedures without the Concessionaire's prior written consent. The Schedule for Parking Fines is set forth in Schedule 5. The Concessionaire shall perform all Parking Enforcement in accordance with the Enforcement Policies and Procedures.

(iii) Prior to the Closing Date, the City shall extend any restrictions imposed on loading zones in such a manner that such restrictions are coterminous with the Periods of Operation for the Metered Parking Spaces in the relevant Zone.

(iv) The City shall remain responsible for the adjudication related to the Parking Enforcement; provided that such adjudication shall be consistent with the historical practices of the City, including a consistent level of parking tickets that are dismissed or appealed.

(v) Each of the following shall constitute a Compensation Event requiring the payment of Concessionaire Compensation in accordance with Section 15.3: (A) the City's failure to maintain the Schedule of Parking Fines in accordance with Sections 4 and 5 of Schedule 5; (B) any change to the Enforcement Policies and Procedures or any change in Law enacted by the City that negatively impacts Concessionaire Parking Enforcement Revenue, including any increase in the number of unpaid parking tickets required to permit the towing of a motor vehicle and any change in the requirements for suspension of the license plate registration of a motor vehicle due to unpaid parking tickets; (C) the City's failure to comply with Section 3.2(e)(iv) and (D) any decrease in the amount of the fines payable in respect of late payment of a Parking Violation Fine or any failure to ensure such fines are Adjusted for Inflation for each Year.

(vi) The Concessionaire shall have the exclusive right to collect and (subject to Section 7.1(b)) retain all Concessionaire Parking Enforcement Revenue during the Term in accordance with Enforcement Policies and Procedures, regardless of whether such Concessionaire Parking Enforcement Revenue resulted from Parking Enforcement conducted by the Enforcement Contractor, the Enforcement Sub-Contractor or the City's designated law enforcement officers.

(vii) The Concessionaire shall delegate its duties under this Section 3.2(e) to a Contractor (the "Enforcement Contractor"), reasonably acceptable to the City (which the City acknowledges may be the Operator); provided however, that to the extent that such Enforcement Contractor is the Operator, the Operator shall delegate all duties relating to the issuance of parking tickets and citations for Parking Enforcement under this Section 3.2(e) to an independent third-party Contractor of the Operator (the "Enforcement Sub-Contractor"); provided further however that any Contractor selected pursuant to this Section 3.2(e)(vii) shall be subject to the same restrictions and approval requirements of the Operator in Section 3.3. For the avoidance of doubt, the Concessionaire and/or the Operator shall oversee and manage the Enforcement Sub-Contractor, as applicable, in their sole discretion subject to the provisions set forth in the Operating Standards.

(viii) The City, solely through its law enforcement officers (and not through any private contractor, parking enforcement officer or law enforcement officer whose primary focus is Parking Enforcement), retains the right to perform Parking Enforcement. The Concessionaire shall provide to the City, at the Concessionaire's sole cost and expense, parking ticket books or rolls and other items and materials reasonably necessary to enable the City to perform Parking Enforcement as contemplated by this Section 3.2(e). In the event that any electronic handheld enforcement device provided by the Concessionaire to the City is lost, misplaced or stolen, the City shall reimburse the Concessionaire for the replacement cost of such device; provided, however, a replacement of such electronic handheld enforcement device due to a failure of such device from ordinary wear and tear or a manufacturing defect shall be at the expense of the Concessionaire. The City retains the sole right and responsibility to provide all other enforcement of parking rules and violations not listed in the Enforcement Policies and Procedures and Schedule 5. Parking Enforcement performed by the Concessionaire through the Enforcement Contractor pursuant to this Section 3.2(e) shall have the same legal efficacy as Parking Enforcement performed by the City or its Representatives.

(f) *Residential Permits.*

(i) The City reserves the right to designate certain on-street parking that are not Metered Parking Spaces as residential parking requiring a Residential Permit; provided, that (i) such designation does not materially affect the Metered Parking System and (ii) such Residential Permits are not issued for parking in Metered Parking Spaces. The Parties acknowledge and agree that if any such designation does materially affect the Metered Parking System or if any such Residential Permit is issued for parking in Metered Parking Spaces then such designation or issuance shall constitute a Compensation Event requiring payment of Concession Compensation in accordance with Section 15.3. In the event there is a dispute as to whether such additional residential parking will materially impact the Concessionaire, the Parties shall submit such dispute for resolution by technical arbitration pursuant to Section 19.7.

(ii) The Concessionaire shall have the exclusive right and responsibility for administering the issuance of Residential Permits in the Zones in exchange for the right to charge, collect and retain the Residential Permit Fee. Unless otherwise agreed to by the City, the Residential Permits Fees shall be a nominal amount that should approximate the amount of the actual cost to issue such Residential Permit.

(iii) Subject to Section 3.18, in the event the City builds a public parking garage in Zone 4, the City shall institute a Residential Permit program for non-Metered Parking Spaces in and around Zone 4 which shall be administered by the Concessionaire on terms mutually acceptable to the Parties.

### **Section 3.3. Operator Engagement.**

(a) The Metered Parking System Operations shall, at all times during the Term, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how to perform the Metered Parking System Operations in accordance with this Agreement (an "Operator") who may be (but is not required to be) the Concessionaire itself. The Operator on the first Day of the Term shall be the Concessionaire unless the Concessionaire has designated another Person to be the Operator and such Person has been approved in accordance with Section 3.3(b). The Concessionaire shall not engage or appoint a replacement Operator unless the City has Approved such Operator; provided, however, that a Change in Control of an Operator shall be deemed to be the appointment of a replacement Operator subject to the City's Approval and (ii) if the City does not provide the Concessionaire with the relevant Approval, the Concessionaire shall be entitled to appoint an interim Operator without the City's Approval for a period not to exceed one hundred eighty days (180) from the date of appointment of such interim Operator. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of the Concessionaire, and any delegation to an Operator shall not relieve the Concessionaire of any obligations, duties or liability hereunder. The Concessionaire shall immediately notify the City upon the termination or resignation of an Operator. Any agreement between the Concessionaire and any Operator shall by its terms terminate without penalty at the election of the City or the Operator upon three (3) Business Days' notice to such Operator or the City, as applicable, upon the termination of this Agreement. The Operator shall have no interest in or rights under this Agreement or the Metered Parking System unless the Operator is the Concessionaire itself.

(b) *Approval.* The City's Approval of a proposed replacement Operator may be withheld if the City reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law or such proposed Operator is not capable of performing the Metered Parking System Operations in accordance with this Agreement, which determination may be based upon, or take into account, one or more of the following factors: (i) the financial strength and integrity of the proposed Operator, its direct or indirect beneficial owners and each of their respective Affiliates; (ii) the capitalization of the proposed Operator; (iii) the

experience of the proposed Operator in operating on street metered parking systems; and (iv) the background and reputation of the proposed Operator, its direct or indirect beneficial owners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects).

#### **Section 3.4. Authorizations; Qualifications.**

- (a) *Compliance.* The City confirms, acknowledges and agrees that no Authorizations are required to be obtained by the Concessionaire to consummate the Transaction or perform the obligations of the Concessionaire hereunder, including in respect of the Metered Parking System Operations, installation of any Metered Parking Devices, signage, equipment, pavement markings, line striping or other requirement associated with the capital improvements contemplated by Section 4, except for those Authorizations that have been issued by the City prior to the Time of Closing and so long as such obligations of the Concessionaire are performed in material compliance with the Operating Standards and otherwise in compliance with this Agreement. The Concessionaire shall comply with, promptly renew and maintain in good standing all such Authorizations; provided, however, that if the Concessionaire is, at any time during the Term, required to obtain any additional Authorization, whether from the City or any other Governmental Authority, the City shall use its reasonable efforts to assist the Concessionaire in obtaining such Authorization and any costs and expenses incurred by the Concessionaire incurred in relation to obtaining such Authorization shall be reimbursed by the City within thirty (30) Days of demand for payment thereof. Nothing in this Agreement, including Section 2.1, shall be deemed to waive or modify any Authorization required to be obtained by the Concessionaire or any other Person in connection with the Metered Parking System, the Metered Parking System Operations or any activities generating any Metered Parking Revenue or any Parking Enforcement Revenue.
- (b) *Qualifications.* The Concessionaire shall, at all times during the Term, maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Metered Parking System Operations, including all rights, franchises, licenses, privileges and qualifications required in connection with the Metered Parking System Operations. For the avoidance of doubt, the foregoing shall not prohibit or limit the Concessionaire from change its organizational form or status, subject to the terms of Section 17.1(e).

#### **Section 3.5. No Encumbrances.**

- (a) *By the Concessionaire.* The Concessionaire shall not do any act or thing that will create any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Metered Parking System and shall promptly remove any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Metered Parking System, unless the Encumbrance came into existence as a result of an act,

omission, negligence, misconduct or violation of Law by the City, any Governmental Authority established under the Laws of the City or a Person claiming through any of them which in turn was not caused by an act or omission of the Concessionaire. The Concessionaire shall not be deemed to be in default hereunder if the Concessionaire continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; provided that the Concessionaire has given (i) advance notification to the City that it is the intent of the Concessionaire to contest the validity or collection thereof or cause such contest and (ii) unless a bond or other security is provided in connection with such proceedings, a satisfactory indemnity to the City or deposited with the City a Letter of Credit, indemnity bond, surety bond, cash or Eligible Investment reasonably satisfactory to the City in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the City may reasonably estimate to be payable by the Concessionaire at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; provided, however, that in the event such Letter of Credit, bond, cash or Eligible Investment shall be so deposited, the same shall be held by the City until such claim or other imposition shall have been released and discharged and shall thereupon be promptly returned to the Concessionaire, less any amounts reasonably expended by the City to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the City by virtue of the contest of such Encumbrance.

- (b) *By the City.* Neither the City nor any Governmental Authority established under the Laws of the City shall do any act or thing that will create or permit to exist any Encumbrance (other than a Permitted City Encumbrance) against the Metered Parking System and shall promptly remove any Encumbrance (other than a Permitted City Encumbrance) against the Metered Parking System that came into existence as a result of an act of or omission by the City, such Governmental Authority or any Person claiming through any of them. The City shall not be deemed to be in default hereunder if the City continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; provided that the City has given (i) advance notification to the Concessionaire that it is the intent of the City to contest the validity or collection thereof or cause such contest and (ii) unless a bond or other security is provided in connection with such proceedings, a satisfactory indemnity to the Concessionaire or deposited with the Concessionaire a letter of credit, indemnity bond, surety bond, cash or Eligible Investment reasonably satisfactory to the Concessionaire in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the Concessionaire may reasonably estimate to be payable by the City at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; provided, however, that in the event such letter of credit, bond, cash or Eligible Investment shall be so deposited, the same shall be held by the Concessionaire until such claim or other imposition shall have been released



and discharged and shall thereupon be promptly returned to the City, less any amounts reasonably expended by the Concessionaire to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the Concessionaire by virtue of the contest of such Encumbrance.

- (c) *Removal.* Each Party, as reasonably requested by the other Party and at such other Party's costs and expense, shall use its reasonable efforts to assist such other Party in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by such other Party; provided that nothing herein shall obligate the City to waive, modify or otherwise limit or affect the enforcement by the City of any applicable Law with respect to the Metered Parking System or any activities generating any Metered Parking Revenue or any Parking Enforcement Revenue.

**Section 3.6. Single Purpose Covenants.** The Concessionaire shall, at all times during the Term, (i) be formed and organized solely for the purpose of owning the Concessionaire Interest and using, possessing, operating and collecting the Metered Parking Revenue and Concessionaire Parking Enforcement Revenue with respect to and otherwise dealing with the Metered Parking System (and carrying out the Metered Parking Services and other activities permitted pursuant to this Agreement (and any activities reasonably incidental thereto (including the financing thereof and of the Transaction)), (ii) not engage in any business unrelated to clause (i) above, (iii) not have any assets other than those related to its activities in accordance with clauses (i) and (ii) above, (iv) except as appropriate for Tax reporting purposes, maintain its own separate books and records and its own accounts, (v) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence, and (vi) not guarantee or otherwise obligate itself with respect to the debts of any other Person.

**Section 3.7. Rights of the City to Access and Perform Work on the Metered Parking System.**

- (a) The City shall have access to the Metered Parking System and each and every part thereof (provided that no access is granted to the cash collections, Metering Device keys and locks) at all reasonable times and upon reasonable prior notice to perform each of the following at the City's own cost and expense (other than if pursuant to sub-clauses (ii) or (iii) below):
  - (i) to inspect the Metered Parking System or determine whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law pursuant to Section 8.3;
  - (ii) if a Concessionaire Default then exists, to make any necessary repairs to the Metered Parking System and perform any work therein pursuant to Section 16.1(b)(iii);
  - (iii) in the event of an emergency or danger that threatens to cause injury to individuals (or damage to property) or to impair the continuous operation of the Metered Parking System or to impair the enforcement of parking violations or traffic control regulations and if the

Concessionaire is not then taking all necessary steps to rectify or deal with said emergency or danger, to take actions as may be reasonably necessary to rectify such emergency or danger (in which case, no notice shall be necessary);

(iv) at its own cost and expense and subject to Section 7, to (A) install, design, manage, maintain, repair and rehabilitate any existing or future utilities or similar services (whether provided by the City or third parties at the City's instruction) in, on, under, across, over or through the Metered Parking System (including water and sewer lines, power transmission lines, fiber optic cable, other communications and other equipment), and (B) grant easements and rights on, over, under or within the Metered Parking System for the benefit of suppliers or owners of any such utilities or services (provided that notwithstanding the foregoing clauses (A) and (B), the Concessionaire shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account (and not for lease, resale or service to third parties) to the extent that the said utilities or services are necessary for the Metered Parking System Operations); and

(v) to, solely in accordance with the terms hereof, do any other act or thing that the City may be obligated to do pursuant to the terms of this Agreement or have a right to do under this Agreement;

provided, however, that in connection with any entry pursuant to this Section 3.7(a), the City shall use reasonable efforts to minimize interference with the Metered Parking System Operations or the value of the Metered Parking System Assets in connection with any entry pursuant to this Section 3.7(a).

- (b) *Access Rights.* To the extent that the City undertakes work or repairs under Section 3.7(a) or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Operating Standards and in such a manner as not to unreasonably interfere with the conduct of business in or use of such space.
- (c) *Effect of Reservation.* Any reservation of a right by the City and any of its Representatives, grantees, tenants, licensees and others claiming by, through or under the City to enter the Metered Parking Spaces and to make or perform any repairs, alterations, Restoration or other work in, to, above, or about the Metered Parking System which is the Concessionaire's obligation pursuant to this Agreement, shall not be deemed to (i) impose any obligation on the City to do so, (ii) render the City liable to the Concessionaire or any other Person for the failure to do so or (iii) relieve the Concessionaire from any obligation to indemnify the City as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the City to do any work required to be performed by the Concessionaire hereunder and performance of any such work by the City and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City shall not constitute a waiver of the Concessionaire's default in failing to perform the same.

### **Section 3.8. Payment of Taxes.**

- (a) Except as otherwise provided in this Section 3.8, the Concessionaire shall pay when due all Taxes payable during the Term in respect of the use or conduct of business with respect to the Metered Parking System. The City reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid and which are not being contested by the Concessionaire, provided that prior written notice of such payment is provided to the Concessionaire, and the amount so paid by the City shall be deemed additional consideration hereunder, due and payable by the Concessionaire within twenty (20) Business Days after written demand by the City. The Concessionaire shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 3.8, provided that (i) the Concessionaire has given prior notice to the City of each such contest, (ii) no contest by the Concessionaire may involve a reasonable possibility of forfeiture or sale of the Metered Parking System, and (iii) upon the final determination of any contest by the Concessionaire, if the Concessionaire has not already done so, the Concessionaire shall pay any amount found to be due, together with any costs, penalties and interest.
- (b) Any imposition of any (A) sales, use or similar Tax imposed by the State of Indiana, the City or any other unit of local government in the State of Indiana (other than payment of sales, use or similar Tax on goods purchased for use in the Metered Parking System); (B) transfer, stamp, deed recording or similar Tax imposed by the State of Indiana, the City or any other unit of local government in the State of Indiana; (C) Property Taxes; and (D) Parking Taxes, in each case, on the Concessionaire after the Bid Date, by reason of the execution and delivery of this Agreement, any grant or transfer to the Concessionaire at Closing or any New Agreement or in relation to the Concessionaire Interest hereunder shall constitute a Compensation Event and the City shall pay to the Concessionaire the Concession Compensation with respect thereto in accordance with Section 15.3.
- (c) Any imposition of any sales, use or similar Tax imposed by the United States of America, or any unit of Federal government of the United States of America, that is applicable to the Metered Parking System, after the Bid Date, shall grant the Concessionaire the right, notwithstanding anything herein to the contrary, to increase the Metered Parking Fees in an amount reasonably necessary to compensate the Concessionaire for the increased costs associated with such new Tax.

**Section 3.9. Utilities.** The Concessionaire shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, water and other utilities and services used in the Metered Parking System Operations or supplied to the Metered Parking System during the Term. The City does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of utility services in and of itself shall never be deemed an Adverse Action

or an eviction or disturbance of the Concessionaire's use of the Metered Parking System or any part thereof, or render the City liable to the Concessionaire for damages or, unless the same constitutes a Delay Event, relieve the Concessionaire from performance of the Concessionaire's obligations under this Agreement.

### **Section 3.10. Notices of Defaults and Claims.**

- (a) *Notice by the Concessionaire.* The Concessionaire shall promptly give notice to the City (i) if the Concessionaire becomes aware that a Concessionaire Default has occurred under this Agreement (provided, however, that the failure to give such notice shall not constitute an independent Concessionaire Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the Concessionaire pertaining to the Metered Parking System, the Metered Parking System Operations or the City (whether or not such claim, proceeding or litigation is covered by insurance) of which the Concessionaire is aware (other than as a result of a notice to the Concessionaire from the City). The Concessionaire shall provide the City with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.
- (b) *Notice by the City.* The City shall promptly give notice to the Concessionaire (i) if the City becomes aware that a City Default has occurred under this Agreement (provided, however, that the failure to give such notice shall not constitute an independent City Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the City pertaining to the Metered Parking System, the Metered Parking System Operations or the Concessionaire (whether or not such claim, proceeding or litigation is covered by insurance) of which the City is aware (other than as a result of a notice to the City from the Concessionaire). The City shall provide the Concessionaire with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

**Section 3.11. Assignment of Operating Agreements and Plans.** At the request of the City, the Concessionaire shall collaterally assign, to the extent reasonably practicable, to the City, in form and substance satisfactory to the City, acting reasonably, all of the right, title and interest of the Concessionaire in, to and under all or any of the Operating Agreements and all present and future specifications, plans, drawings, information and documentation in relation to the Metered Parking System Operations except to the extent any of the foregoing involve proprietary information (collectively, the "Operating Agreements and Plans") as collateral security to the City for the observance and performance by the Concessionaire of its covenants and obligations under this Agreement. The Concessionaire covenants that it shall cause all of the right, title and interest of the Concessionaire in, to and under all Operating Agreements and Plans entered into or created after the Time of Closing to be collaterally assignable to the City for the purposes of this Section 3.11. The City acknowledges that the Operating Agreements and Plans may also be assigned as security to a Collateral Assignee and that each of the City and such Collateral Assignee shall be entitled to use the Operating Agreements and Plans on enforcing their respective security as hereinafter provided. Without limiting the generality of the

foregoing, but subject to the City's assumption of future liabilities under the Operating Agreements and Plans and to Article 18, the City shall be entitled to use the Operating Agreements and Plans in each of the following events: (i) if the City terminates this Agreement without a concession agreement being granted to a Collateral Assignee or nominee thereof pursuant to the provisions of Article 18; and (ii) if the City elects to use the Operating Agreements and Plans to remedy a Concessionaire Default under this Agreement. Notwithstanding the foregoing, in the event that any such Collateral Assignee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 18, or otherwise, and is using or reasonably expects to be using the Operating Agreements and Plans in respect of the Metered Parking System Operations, the City shall not be entitled to use the Operating Agreements and Plans in enforcing its security, it being acknowledged that any assignment of the Operating Agreements and Plans to a Collateral Assignee shall have priority at all times over any assignment of the Operating Agreements and Plans to the City and the City shall cooperate with the Concessionaire and the Collateral Assignee in connection with ensuring such priority, including that the City shall execute and deliver to the Collateral Assignee an intercreditor and subordination agreement in form and substance satisfactory to such Collateral Assignee, acting reasonably, acknowledging such priority. The Concessionaire shall promptly deliver to the City, at the sole cost and expense of the Concessionaire, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and Plans.

**Section 3.12. City Use of Information and Records.** Subject to the confidentiality requirements set forth in Section 8.2(b), the City shall be entitled to access to all reasonable records, electronic data and other information collected and retained by the Concessionaire with respect to the Metered Parking System Operations to the extent needed by the City in connection with the enforcement of traffic and parking regulations, the identification of parking violations, the imposition and collection of parking fines and the adjudication of parking enforcement cases.

**Section 3.13. Metering Devices.** The Concessionaire shall be required to maintain and operate the Metering Devices in accordance with the Operating Standards. The Concessionaire will inspect or otherwise monitor all Metering Devices in a manner designed to identify and promptly repair or replace defective or inoperative Metering Devices. The Concessionaire shall establish a method pursuant to which members of the general public may report inoperative and defective Metering Devices and shall display, at or near each Metering Device, a telephone number and internet address for the reporting of inoperative and defective Metering Devices and other operational problems related to the Metered Parking System and Metered Parking System Operations.

**Section 3.14. Payments by the City.** Subject to the City's obligations pursuant to Section 3.8(b), the Concessionaire acknowledges and agrees that if the City is required under applicable Law of general application to withhold a portion of any payment that the City is obligated to make to the Concessionaire under this Agreement, the City will be deemed to have satisfied such payment obligation to the Concessionaire to the extent of such withholding by the City. If any such withheld amounts are permitted to be paid to the Concessionaire, the City shall pay such amounts to the Concessionaire whenever permitted by Law. The City shall notify the

Concessionaire in writing at least ten (10) Business Days prior to the withholding of any amount pursuant to this Section 3.14

**Section 3.15. Naming Rights and Commercial Advertisements and Activities.**

- (a) The Concessionaire shall have the exclusive naming rights with respect to the Metered Parking System provided that such name must be Approved by the City. The Concessionaire must seek prior City Approval with respect to commercial advertisements, including advertising on Metering Devices and advertisements dispensed from Metering Devices. The City retains the exclusive rights with respect to any other commercial activities at the City's sole expense, other than the collection of Metered Parking Fees, Temporary Closure Fees and Concessionaire Parking Enforcement Revenues derived from the Metered Parking System.
- (b) Notwithstanding the foregoing provisions of this Section 3.15, the Concessionaire grants to the City an exclusive, non-transferable, royalty free license during the Term to use the name chosen for the Metered Parking System together with all existing and future developed logos and marks used in connection with the Metered Parking System Operations.

**Section 3.16. Reversion of Metered Parking System.** On the Reversion Date, the Concessionaire shall surrender and deliver to the City all of its rights, title and interest in the Metered Parking System (including all improvements to the Metered Parking System, the Metered Parking System Assets and all tangible and intangible personal property of the Concessionaire (including inventories) that is included in the Metered Parking System and used in connection with the Metered Parking System Operations, subject, however, as to any intellectual property included in the Metered Parking System, to any restrictions or prohibitions to disclosure, transfer or sharing thereof and any other rights of third parties with respect thereto, all in accordance with the provisions of Section 16.4.

**Section 3.17. Police, Fire, Emergency, and Public Safety Access Rights.** Notwithstanding any other provisions of this Agreement, at all times during the Term and without notice or compensation to the Concessionaire (i) any police, fire, and emergency services and any other security or emergency personnel retained by or on behalf of the City shall have access, as required by such services or personnel, to the Metered Parking System in performance of their duties; and (ii) any Governmental Authority with jurisdiction over the Metered Parking System shall have access to the Metered Parking System as necessary for emergency management and homeland security purposes, including the prevention of or response to a public safety emergency (so long as any exercise of such jurisdiction, to the extent effected by the City, shall be strictly in accordance with the terms hereof).

**Section 3.18. Competing Public Parking Facility.**

- (a) Subject to Section 3.18(b) and Section 3.18(c), the City will not operate, and will not permit the operation of, a Competing Public Parking Facility. A "Competing Public Parking Facility" means any off-street public parking lot or public parking

garage that (i) is (A) owned, leased or operated by the City or (B) operated by any Person and located on land owned by the City, or leased to the City; (ii) is within one-quarter (1/4) of a mile of a Metered Parking Space; (iii) is used primarily for general public parking; (iv) has a daily schedule of fees that provides for an hourly equivalent cost for parking motor vehicles that is (A) with respect to Zones 1, 2 and 3 less than three (3) times the highest Metered Parking Fees then in effect for Metered Parking Spaces in the applicable Zone and (B) with respect to Zone 4, less than two (2) times the highest Metered Parking Fees then in effect for Metered Parking Spaces in Zone 4; provided, however, that with respect to any motor vehicle that is continuously parked for more than four (4) hours in such off-street public parking lot or public parking garage, the City may charge any rate for the fifth hour of parking and each additional hour thereafter, including levying no charge; and (v) was not used for general public parking on the effective date of this Agreement.

- (b) As used in Section 3.18, the term "Competing Public Parking Facility" does not include (i) any parking lot or parking garage that did not exist as of the Bid Date located at, or providing parking for, motor vehicles in connection with the regular operations of, any public buildings and facilities that did not exist as of the Bid Date, including any airport, courthouse, correctional facility, police station, fire station, governmental administrative building, public school, public library, public hospital or similar government building; provided, however, that the capacity of such parking lot or parking garage shall first be independently verified in writing to the Concessionaire by a third party Consultant engaged by the Concessionaire and Approved by the City, with the cost of such Consultant to be shared equally between the City and the Concessionaire, such that (a) such public building's or facility's parking capacity does not exceed the required use for the operations of such public building or facility, and (b) the actual use for the operations of such public building or facility has processes in place to validate and enforce usage solely for such public building or facility, as defined above; (ii) any parking facility located at, or adjacent to, any sports stadium or sports arena having a seating capacity in excess of fifteen thousand (15,000) and requires a same day ticket to the relating sports stadium or sports arena for entrance; (iii) park and ride facilities that are used primarily by mass transit passengers; (iv) temporary parking facilities used for Special Events; and (v) any parking facility that is used primarily to provide parking for an affordable housing development or a public housing project.
- (c) If the City undertakes or permits a Competing Public Parking Facility in violation of Section 3.18(a), such action shall constitute a Compensation Event requiring the payment of Concession Compensation in accordance with Section 15.3.

### **Section 3.19. Employee Parking Program**

- (a) *Legacy Placard Program.* All Placards issued prior to the Closing Date shall continue to remain in full force and effect until thirty (30) Days after the Concessionaire has implemented electronic metering in Zones 1, 2 and 4 pursuant

to Section 4.4. After such time, all Placards shall be null and void. The City represents and warrants that no additional Placards have been issued by the City since the Bid Date and covenants and agrees that no further Placards will be issued by the City prior to Closing or during the Term, the failure of which shall constitute a Compensation Event requiring the payment of Concession Compensation in accordance with Section 15.3.

- (b) *Employee Parking Program.* The Concessionaire agrees to cooperate with the City to develop a program for City, State and Federal employees (as determined by the City) to enable such employees to park in Metered Parking Spaces in Zones 1, 2 and 4 by use of a pre-paid card, special credit card or similar system (each such card, a "Pre-Paid Card") and in Zone 3 by using special parking tokens, or similar system, to be provided by the Concessionaire upon the request of the City and which shall be pre-paid by the City (such program, the "Employee Parking Program"). The City shall be charged for the use of the Metered Parking Spaces under the Employee Parking Program in accordance with the fees set forth on Schedule 5; provided that the duration requirements set forth in Section 1(b) of Schedule 5 shall not be applicable to employees using the Employee Parking Program. The cost of implementing and monitoring the Employee Parking Program shall be borne by the Concessionaire; provided that, for each Pre-Paid Card issued under the Employee Parking Program in excess of five hundred (500) Pre-Paid Cards, the City shall reimburse the Concessionaire for administrative costs of Twenty Dollars (\$20) per Pre-Paid Card, as Adjusted for Inflation each Year. Fees for the use of the Employee Parking Program shall be paid by the City quarterly within five (5) Business Days of the City's receipt of the report set forth in Section 3.19(c).
- (c) *Reporting Requirement.* Within sixty (60) Days after the end of each Quarter, or as soon as reasonably practicable thereafter, the Concessionaire shall deliver to the City a report setting forth the use of the Metered Parking Spaces pursuant to the Employee Parking Program, which such report shall be in sufficient detail to allow the Parties to determine the amount owed to Concessionaire by the City and to enable the City to determine the detailed usage of the participants in the Employee Parking Program (e.g. where and for how long each participant parked at a Parking Meter Space).

## **ARTICLE 4**

### **CAPITAL IMPROVEMENTS**

**Section 4.1. Concessionaire Responsibility for Capital Improvements.** The Concessionaire shall be responsible for all capital improvements with respect to the Metered Parking System required to be completed during the Term in accordance with the terms of this Agreement, including as required by the Operating Standards.

**Section 4.2. Authorizations Related to Capital Improvements.** The Concessionaire's obligation to perform capital improvements shall be subject to the issuance of any and all Authorizations to be issued by the relevant Governmental Authority and as required by Law;



provided, however that at the Closing the City shall have granted the Concessionaire all Authorizations in accordance with Section 3.4. The City shall not unreasonably withhold, condition or delay the issuance of any such Authorization required to be issued by the City, and shall the City use its reasonable efforts to assist and cooperate with the Concessionaire in obtaining any and all Authorizations (including any required rights of access over real property that is owned or controlled by the City) in order for the Concessionaire to perform capital improvements.

**Section 4.3. City Responsibility for Capital Improvements.** The City, at its own cost and expense, shall maintain, repair and rehabilitate any existing or future sidewalks, roads or streets constituting Affected Property under the jurisdiction of the City that provide direct access to or consists of the Metered Parking System in such a manner as to maintain access to and from the Metered Parking System reasonably comparable to that in existence as of the date of this Agreement and in any event to a standard not less than that observed by the City with respect to other public roads, including with respect to street sweeping, trash collection, snow removal, the maintenance of adequate street-level lighting and other maintenance activities related thereto. Any material failure by the City to comply with this Section 4.3 shall constitute a Compensation Event requiring the payment of Concession Compensation in accordance with Section 15.3. Prior to undertaking any maintenance, repairing or rehabilitation pursuant to this Section 4.3 the City shall first give prompt notice to the Concessionaire and will consult with the Concessionaire as to how to mitigate the effects of such work which is proposed to be carried out.

**Section 4.4. Required Payment Options.** Any Metered Parking Space with a Metered Parking Fee of \$1.00 or more per hour must have a payment option at the point of sale other than the cash payment of the Metered Parking Fee. The Concessionaire shall provide such payment option by use of a credit card or a debit card or similar electronic methods reasonably acceptable to the City with respect to each Metered Parking Space before any increase of the Metered Parking Fee as set forth on Schedule 5 can occur; provided, however, electronic meters used in Zone 1 (as described on Schedule 5) must be multi-space metering for four (4) or more Metered Parking Spaces; provided, further however that no payment option at the point of sale other than the cash payment of the Metered Parking Fee shall be required for any Metered Parking Space in Zone 3. The Concessionaire shall be responsible for all costs associated with such electronic upgrades including the cost of removing the old metering devices and poles and repairing any damage caused by such removal (i.e., repairing the holes remaining after such removal). For the avoidance of doubt, the Concessionaire shall have the unfettered ability to determine the size of the spacing and relating striping of the Metered Parking Spaces within the Metered Parking System in accordance with the Operating Standards.

## **ARTICLE 5 MODIFICATIONS**

**Section 5.1. City Directives.** The City may, at any time during the Term, issue a City Directive to the Concessionaire. Subject to the City making available to the Concessionaire sufficient funds to perform the work required to implement such City Directive at or before the time payment for such work is required to be made, and the Concessionaire having obtained (with the cooperation of the City) all relevant Authorizations from all relevant Governmental Authorities required for the relevant work, the Concessionaire shall perform the work required to

implement such City Directive, and the City shall pay to the Concessionaire the Concession Compensation with respect thereto. The addition of or the removal of Metered Parking Spaces by the City (including any direction to install or remove Metering Devices) is not a City Directive and shall not result in Concession Compensation, but shall be governed by the provisions of Article 7.

**Section 5.2. Concessionaire Requests.** If the Concessionaire wishes at any time during the Term to make a material change in the dimensions, character or quality of any part of the Metered Parking System, then the Concessionaire may submit to the City, for Approval, a Concessionaire Request with respect to such change and shall submit to the City for its Approval specific plans with respect to any such work. The Concessionaire shall not in any event be required to submit a Concessionaire Request, and no Approval shall be required, with respect to any Concessionaire's actions so long as such actions comply with applicable Operating Standards. The Concessionaire shall be responsible for all amounts required to implement an Approved Concessionaire Request (and any Losses incurred in connection therewith). No Concessionaire Request shall be implemented unless and until such Concessionaire Request has been Approved by the City.

**Section 5.3. Performance of Modifications.** Subject to the other provisions of this Article 5, the Concessionaire shall ensure that City Directives and Approved Concessionaire Requests are performed in a good and workmanlike manner and diligently complied with and implemented in such manner that the costs (in the case of City Directives only) and delays relating thereto are minimized.

## **ARTICLE 6 OPERATING STANDARDS**

**Section 6.1. Compliance with Operating Standards.** The Concessionaire shall, at all times during the Term, cause the Metered Parking System Operations to, comply with and implement the Operating Standards in all material respects (including any changes or modifications to the Operating Standards pursuant to the terms of this Agreement). The Concessionaire shall have in place procedures that are reasonably designed to achieve compliance with the Operating Standards. The City and the Concessionaire agree that the Operating Standards shall be construed flexibly in light of their objectives. The Operating Standards shall not be deemed to be violated by occasional, incidental or immaterial acts or omissions, including any occasional, incidental or immaterial failure to comply with specific requirements set forth in the Operating Standards other than actions or omissions that endanger the public health or safety. Without limiting the generality of the foregoing, any failure to meet specific time limits, durations or frequencies set forth in the Operating Standards shall not constitute a violation; *provided* that any such failure is not inconsistent with procedures that are designed to achieve compliance with the requirements set forth in the Operating Standards. Except as specifically set forth in this Agreement (including the Operating Standards), the Concessionaire shall perform all work required to comply with and implement the Operating Standards in all material respects (including the capital improvements described therein) as part of the Metered Parking System Operations and at its sole cost and expense. To the extent that any term or provision of the Operating Standards conflicts with any term or provision otherwise

specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision in the Operating Standards.

**Section 6.2. Proposed Operating Standards.** If the Concessionaire, at its cost and expense, wishes to implement and use operating standards other than the Operating Standards, the Concessionaire must provide notice of such proposed operating standards to the City for Approval. The Concessionaire's proposed operating standards must be accompanied by an explanation of the Concessionaire's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. The City may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the City to determine if the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. Until the City provides its Approval for the implementation of the Concessionaire's proposed operating standards, the Concessionaire shall not implement the proposed operating standards and shall implement and comply with the Operating Standards. The Concessionaire's proposed operating standards shall be deemed incorporated into the Operating Standards upon Approval by the City in accordance with the terms hereof. If the City refuses to Approve any proposed operating standards and the Concessionaire disagrees with such refusal, the Concessionaire may submit the matter to arbitration under the provisions of Article 19.

**Section 6.3. Modified Operating Standards.**

- (a) The City shall have the right, at any time during the Term, to modify or change the Operating Standards upon notice to the Concessionaire where necessary to comply with any new Law (other than a Law of the City) applicable to the Metered Parking System Operations. In the event the City modifies the Operating Standards in accordance with the immediately preceding sentence, the Concessionaire, at its cost and expense, shall perform all work required to implement and shall comply with all such modifications and changes and in no event shall the Concessionaire be excused from compliance with any such modification or change; *provided, however*, if such modification or change could reasonably be expected to result in a reduction in the Metered Parking System Concession Value by more than two percent (2%), such modification or change to the Operating Standards shall constitute a Compensation Event and the City shall pay to the Concessionaire the Concession Compensation with respect thereto at the time such modification or change is implemented in accordance with Section 15.3. The Concessionaire shall have the right to challenge pursuant to Article 19 any modified Operating Standard on the grounds that it does not meet the requirement of this Section 6.3(a).
- (b) If during the Term the City is of the opinion that a modification or change to the Operating Standards is necessary or desirable but such modification or change is not subject to Section 6.3(a), the City may upon reasonable written notice to the Concessionaire modify or change the Operating Standards; *provided, however*, that such modification or change to the Operating Standards shall constitute a

Compensation Event and the City shall pay to the Concessionaire the Concession Compensation with respect thereto at the time such modification or change is implemented in accordance with Section 15.3. At the City's request, the Concessionaire shall perform all work required to implement and shall comply with all such modifications and changes, and in no event shall the Concessionaire be excused from compliance with any such modification or change. The City shall have the right to undertake the work, upon reasonable notice to the Concessionaire, necessary to ensure implementation of and compliance with any such modification or change to the Operating Standards if the Concessionaire fails to do so within a reasonable period of time which in no event shall be less than thirty (30) Days; provided, however, that to the extent that such work is undertaken by the City following proper notice to the Concessionaire and Concessionaire's failure to take reasonable steps in furtherance of the modification or change, the Concessionaire shall pay to the City within ten (10) Business Days following demand therefore, or the City may offset from amounts owing to the Concessionaire in connection with such modification or change, the costs of the portion of the work performed in order to comply with the Operating Standards existing immediately prior to such modification or change, and the City shall be responsible only for the incremental costs of the additional work required in order to implement such proposed modification or change to the Operating Standards and, without duplication with the foregoing, the Concession Compensation with respect to such modification or change.

## **ARTICLE 7**

### **METERED PARKING REVENUES AND PARKING ENFORCEMENT REVENUES**

#### **Section 7.1. Metered Parking Fees and Metered Parking Fines.**

- (a) Upon passage of the Metered Parking System Ordinance, the City shall have approved and adopted the Schedule of Parking Fees and the Schedule of Parking Fines. As of the Time of Closing, the City shall place in effect the Schedule of Parking Fees and the Schedule of Parking Fines, each of which shall be in full force and effect.
- (b) The Concessionaire shall, during the Term, have the exclusive right to collect and retain any and all Metered Parking Revenue and all Concessionaire Parking Enforcement Revenue derived from the Metered Parking Spaces and the right to pledge and assign such revenues as security for any indebtedness incurred by the Concessionaire pursuant to a Collateral Assignment (and related financing documents); provided, however that the Concessionaire shall pay to the City, within sixty (30) Days after the end of each Year, an amount equal to fifty percent (50%) of the System Revenue for such Year in excess of an annual threshold initially equal to Three Million Seven Hundred and Fifty Thousand Dollars (\$3,750,000) (which threshold shall be increased annually by the greater of three percent (3%) or as Adjusted for Inflation) (such amount, the "City System Revenue Sharing Amount").

## **Section 7.2. Designation and Removal of Metered Parking Spaces.**

- (a) *Designation, Temporary Closure and Removal.* Anytime after the Closing Date, the City shall have the right to designate, temporarily close or permanently remove any Metered Parking Space, from time to time, subject to the terms and conditions of this Article 7; provided, however, that the City shall provide the Concessionaire with at least thirty (30) Days' prior written notice of any permanent removal of a Metered Parking Space and two (2) Business Days' prior written notice for any other closure. The City shall not designate any Metered Parking Spaces that are not subject to the terms of this Agreement during the Term (whether pursuant to any other concession agreement or otherwise) and the Parties acknowledge and agree that any such designation shall constitute a Compensation Event requiring the payment of Concession Compensation in accordance with Section 15.3; provided, however that the designation of Residential Permits pursuant to Section 3.2(f) shall not be considered a designation of new Metered Parking Spaces.
- (b) *New Metered Parking Spaces.* Subject to the City having granted all Authorizations in accordance with Section 3.4, the Concessionaire shall be obligated to install Metering Devices with respect to any newly designated Metered Parking Space as follows:
  - (i) the City shall provide written notice to the Concessionaire of the designation of any new Metered Parking Space;
  - (ii) to the extent necessary, the Concessionaire shall order the Metering Device for such newly designated Metered Parking Space within fifteen (15) Business Days after receipt of the City's notice delivered pursuant to Section 7.2(b)(i);
  - (iii) the Concessionaire shall install such Metering Device either, (i) within fifteen (15) Business Days after receipt of such Metering Device from the supplier to the Operator, or (ii) if no new Metered Device needed to be ordered, within fifteen (15) Business Days after receipt of the City's notice delivered pursuant to Section 7.2(b)(i); and
  - (iv) the installation of any Metering Device shall be undertaken in accordance with the Operating Standards.

For the avoidance of doubt, all such Metering Devices (other than Metering Devices for Reserved Metered Parking Spaces which shall be owned by the City) shall be owned by the Concessionaire during the Term.

- (c) *Permanent Removal.* A Metered Parking Space shall be deemed to be permanently removed from the Metered Parking System by the City for the purposes of this Article 7 either: (i) immediately upon the receipt of written notice by the Concessionaire from the City stating that such Metered Parking Space has been permanently removed from the Metered Parking System, or (ii) if the City takes any action that has the practical effect of removing such Metered Parking Space from the Metered Parking System or making it unusable (or fails to

take an action that is necessary to be taken in order to preserve the designated Meter Parking Space as a useable parking space) after written notice is provided by the Concessionaire to the City of such condition, whether or not the City officially or formally removes such Metered Parking Space from the Metered Parking System (or formally declares a Temporary Closure), and whether or not any specific notice of such removal or closure is provided by the City (in either case, a "Permanent Removal"). Notwithstanding the foregoing, the Concessionaire shall not remove any Metered Parking Devices from a Metered Parking Space unless and until such Metered Parking Space is formally removed by the City from being designated as a Metered Parking Space and notice of such removal is provided by the City to the Concessionaire in accordance with (i) above. If a Metered Parking Space ceases to be designated by the City as a Metered Parking Space as a result of a Permanent Removal, then the Concessionaire shall immediately cease collecting Metered Parking Fees with respect to such Metered Parking Space and with seven (7) Business Day after receipt of such written direction of the City, the Concessionaire shall proceed to remove all Metering Devices with respect thereto at its own cost and expense, including costs and expenses necessary to repair any damage caused by such removal (i.e., repairing the holes remaining after such removal). For the avoidance of doubt, in the event that the Concessionaire's initial Metered Parking Spaces Inventory (which shall be prepared as soon as reasonably practicable after the Closing Date, but in no event later than sixty (60) Days after the Closing Date) shall identify an aggregate amount of Metered Parking Spaces that is less than 3,779 Metered Parking Spaces, as contemplated as of the Bid Date, then each Metered Parking Space that is less than such amount shall be deemed permanently removed from the Metered Parking System and shall be treated as a Permanent Removal subject to the payment requirements therefor set forth in Section 7.4(a); provided, however that such Permanent Removals shall be calculated at the Zone level so as to appropriately utilize the Zone level compensation provisions set forth in Schedule 6.

### **Section 7.3. RESERVED**

**Section 7.4. Payments for Permanent Removal.** The Permanent Removal of Metered Parking Spaces during the Term equal to an aggregate amount that is less than fifteen percent (15%) of the Metered Parking Spaces in effect as of the Bid Date shall result in a Compensation Event. The Permanent Removal of Metered Parking Spaces during the Term equal to an aggregate amount of fifteen percent (15%) or more of Metered Parking Spaces in effect as of the Bid Date shall result in an Adverse Action. In the event of (i) a Compensation Event under this Section 7.4 or (ii) an Adverse Action under this Section 7.4 in respect of which the Concessionaire elects to receive Concession Compensation pursuant to Section 14.1(b), the Concessionaire shall be entitled to the following compensation (such compensation, in aggregate, the "Permanent Removal Payment"):

- (a) *Lost Revenue prior to the Initial Anniversary.* In the event any Permanent Removal of a Metered Parking Space prior to the first (1<sup>st</sup>) anniversary of the Closing Date, the City shall pay the Concessionaire the corresponding Permanent

Removal Payment set forth for such Metered Parking Space in the applicable Zone in Schedule 6 in accordance with Section 7.5.

- (b) *Lost Revenue after the Initial Anniversary.* In the event of any Permanent Removal of a Metered Parking Space after the first (1st) anniversary of the Closing Date, the City shall pay the Concessionaire the corresponding Permanent Removal Payment for such Metered Parking Space calculated using the methodology set forth in Section 1 of Schedule 4 in accordance with Section 7.5.
- (c) *Lost Parking Enforcements Revenue.* The Parties acknowledge and agree that each Permanent Removal Payment is intended to compensate the Concessionaire for the lost Metered Parking Revenue and lost Concessionaire Parking Enforcement Revenue related to that Metered Parking Space for the duration of the Term.

#### **Section 7.5. Determination of Permanent Removal Payment.**

- (a) Within sixty (60) Days after the end of each Quarter, or as soon as reasonably practicable thereafter, the Concessionaire shall deliver to the City a statement setting forth: (i) the aggregate number of Permanent Removals in each Zone during such Quarter and during the Term, and (ii) the Permanent Removal Payment for each such Permanent Removal calculated in accordance with Section 7.4. The City shall pay the Concessionaire the amount of the Permanent Removal Payment within ten (10) Business Days of receipt of such statement.
- (b) In the event the City disputes the amount of the Permanent Removal Payment, the Parties shall attempt in good faith to review and agree on the amount of the Permanent Removal Payment. In the event the Parties cannot reach an agreement on the amount of the Permanent Removal Payment, they agree to engage a Consultant to review the Concessionaire's determination of the Permanent Removal Payment. In making its determination, the Consultant shall use all data related to such Metered Parking Space(s) collected by Concessionaire up to the date of removal and the methodology provided in Schedule 4; provided, that if the Consultant is unable to reach a conclusion on this basis, the Consultant shall review such additional information and perform such additional procedures as the Consultant deems reasonably necessary. The determination of the Consultant shall be made as promptly as practicable following the date on which the dispute is submitted, shall be set forth in a written statement delivered to the Parties, and shall be final, binding and conclusive on the Parties. The fees and any expenses of the Consultant shall be paid by the Parties within fifteen (15) Days of such determination as follows: (a) if the Consultant adopts the position of the City, Concessionaire shall bear such fees and expenses; or (b) if the Consultant adopts the position of Concessionaire, the City shall bear such fees and expenses. If a retainer is required by the Consultant, the retainer shall be split equally between the Parties; provided, however, that the retainer shall be considered part of the fees and expenses of the Consultant and if either Party has paid a portion of such retainer, that Party will be entitled to be reimbursed by the other Party to the

extent required by this Section 7.5(b). In the event a Party does not comply with the procedure and time requirements contained herein or such other procedure or time requirements as the Parties otherwise elect in writing, the Consultant shall render a decision based solely on the evidence it has which was timely filed by either of the Parties. The Consultant's resolution of the dispute shall be conclusive and binding upon the Parties and nonappealable.

#### **Section 7.6. Temporary Closure of Metered Parking Spaces.**

- (a) *Administration.* The Concessionaire shall be exclusively responsible for the administration and operation of any Temporary Closures in accordance with the Operating Standards. The Concessionaire shall be entitled to collect and retain the applicable Temporary Closure Fee from any Person, including the City, requesting such Temporary Closure in accordance with this Section 7.6.
- (b) *Third party Temporary Closure Fee.* The Concessionaire shall charge, collect and retain the applicable Temporary Closure Fee from any Person (other than the City), in advance, in respect of any Temporary Closure requested by such Person in accordance with the Operating Standards.
- (c) *City Temporary Closure Fee.*

(i) The Concessionaire shall charge, collect and retain the applicable Temporary Closure Fee from the City, quarterly in arrears, in respect of any Temporary Closure requested by the City in accordance with the Operating Standards; provided, however, that the City shall only be required to pay the Concessionaire the aggregate Temporary Closure Fees in respect of all Temporary Closures in a given Quarter in excess of the Temporary Closure Allowance, which aggregate Temporary Closure Fees shall be payable by the City to the Concessionaire within fifteen (15) Days after the end of such Quarter.

(ii) Subject to the City's obligation to provide notice to the Concessionaire pursuant to Section 7.2(a), a Temporary Closure of an aggregate duration of less than four (4) hours in any Day shall not be treated as a Temporary Closure and shall be disregarded if: (A) such closure is a result of work performed pursuant to Section 3.7(a)(iv) or Section 4.3; or (B) such closure of Metered Parking Spaces (I) occurs on a Saturday between 7 AM and 12 PM, (II) is related to a parade or charity run fundraising event organized by and/or benefiting a not-for profit organization, and (III) is reasonably limited to the staging grounds or running pathway of such event (any such closure, a "Permitted Closure").

(iii) For the avoidance of doubt, (A) any closure that does not comply with the restrictions set forth in Section 7.6(c)(ii) shall constitute a Temporary Closure subject to the payment of the applicable Temporary Closure Fee by the City to the Concessionaire in accordance with Section 7.6(c)(i), and (B) in accordance with Section 7.6(a), the Concessionaire is exclusively responsible for the administration and operation of any Temporary Closures or Permitted Closures.

- (d) *Special Events.* In the event that a Special Event (other than those listed on Schedule 10) that complies with the restrictions set forth below occurs in any



Year, the Temporary Closure Allowance for all Metered Parking Spaces in Zone 1 and Zone 2 for that Year shall be increased to ten percent (10%); provided, however, that, excluding for these purposes those Special Events listed on Schedule 10, the City shall only be permitted to conduct a maximum of twelve (12) Special Events throughout the Term, subject to the following additional restrictions: (i) no Special Event may occur during the first Year of the Term; (ii) only one Special Event may occur during the period commencing on the first day of the second Year of the Term and ending on the last day of the fifth Year of the Term; and (iii) commencing on the first day of the fifth Year of the Term, a Special Event may occur only once every four Years.

(e) *City Obligation to Mitigate Temporary Closures*

(i) The City shall use its good faith efforts to minimize all Temporary Closures, Permitted Closures and Special Events permitted under this Agreement in a manner that is reasonably consistent with the City's normal course of business for closures of Metered Parking Spaces, including, for the avoidance of doubt, preventing the authorization of the imposition of parking moratoriums at the end or near the end of any Year of the Term, the granting of any new permits or authorizations to Persons or a class of Persons that exempts payment of Metered Parking Fees, or the designation of any "no parking days" or other holidays that exempt the payment of Metered Parking Fees.

(ii) Any breach of the City's obligations under this Section 7.6(e) shall constitute a Compensation Event requiring payment of Concession Compensation in accordance with Section 15.3.

**Section 7.7. Additional Metered Parking Spaces.**

(a) During the Term and subject to the provisions of Section 7.2, the City may designate additional Metered Parking Spaces and each additional Metered Parking Space shall immediately become part of the Metered Parking System; provided however, that any designation of additional Metered Parking Spaces by the City that results in (i) an aggregate increase of more than five percent (5%) of additional Metered Parking Spaces in any Zone as of the Bid Date, or (ii) any additional Metered Parking Space outside of any Zone shall first require the Concessionaire's approval, which approval may be withheld if Concessionaire reasonably determines that such additional Metered Parking Space is not economically viable (such Metered Parking Spaces, the "Reserved Metered Parking Spaces").

(b) In the case of newly designated Metered Parking Spaces that are not Reserved Metered Parking Spaces (such Metered Parking Spaces, the "Additional Metered Parking Spaces"):

(i) the Concessionaire shall pay all initial costs and expenses related to the such addition of such Additional Metered Parking Spaces to the Metered Parking System, including all costs and expenses related to the acquisition cost of any new Metered Device

required in respect thereof and the installation of such Metered Device by the Concessionaire; and

(ii) the Concessionaire shall install (if necessary) a Metering Device for such Additional Metered Parking Space and shall commence Metered Parking System Operations with respect to such Additional Metered Parking Space, in each case, in accordance with the Operating Standards.

(c) In the case of Reserved Metered Parking Spaces,

(i) the City shall pay to the Concessionaire all initial costs and expenses related to the addition of such Reserved Metered Parking Spaces to the Metered Parking System, including all costs and expenses related to the acquisition cost of any new Metered Device required in respect thereof and the installation of such Metered Device by the Concessionaire;

(ii) the Concessionaire shall install (if necessary) a Metering Device for each such Reserved Metered Parking Space and shall commence Metered Parking System Operations with respect to such Reserved Metered Parking Space, in each case, in accordance with the Operating Standards;

(iii) within sixty (60) Days after the end of each Quarter, or as soon as reasonably practicable thereafter, the Concessionaire shall prepare a statement of income of the Reserved Metered Parking Spaces for the applicable Quarter, which shall be accompanied by a schedule showing the EBITDA on the Reserved Metered Parking Spaces and the Metered Parking Revenue payable in respect of such Reserved Metered Parking Spaces pursuant to this Section 7.7 in reasonable detail and the method by which such EBITDA and such Metered Parking Revenue have been computed;

(iv) in exchange for performing the Metered Parking System Operations in connection with such Reserved Metered Parking Spaces, the Concessionaire shall pay to the City within ten (10) Days following the end of each Quarter an amount equal to all Metered Parking Revenue generated from such Reserved Metered Parking Space in such Quarter less the greater of (i) fifteen percent (15%) of EBITDA allocated to such Reserved Metered Parking Space in such Quarter and (ii) the Operating Costs allocated to such Reserved Metered Parking Space in such Quarter, plus a fifteen percent (15%) profit margin thereon (the "Concessionaire Reserved Metered Parking Revenue"); provided, however, in the event the Concessionaire Reserved Metered Parking Revenue exceeds the actual revenue collected during any Quarter in respect of such Reserved Metered Parking Space, (Y) the City Reserved Metered Parking Revenue shall be reduced to the extent of such difference and (Z) if such portion of the City Reserved Metered Parking Revenue is insufficient to pay to the Concessionaire the remaining portion Concessionaire Reserved Metered Parking Revenue, the City shall pay to the Concessionaire such difference within ten (10) Days of receipt of written notice from the Concessionaire of such deficiency; and

(v) for purposes of determining EBITDA pursuant to this Section 7.7 (c), the Concessionaire will (i) be accounted for as a separate accounting entity; (ii) not permit any changes in the accounting methods which change would have a material adverse effect on the

calculation of EBITDA, unless such accounting methods are prohibited under United States generally accepted accounting principles or applicable Law; (iii) not engage an Affiliate to provide services in connection with the operation of the Metered Parking System for more than the reasonable fair market value of such services; and (vi) operate in a good faith manner so as to not take any action primarily aimed at decreasing the EBITDA of Concessionaire for the purpose of decreasing payments to the City hereunder.

#### **Section 7.8. RESERVED**

#### **Section 7.9. Compensation for Metered Parking Fee; Period of Operation Adjustments; and Changes Impacting Parking Enforcement Revenues.**

##### **(a) *Changes in Metered Parking Fees.***

(i) *Decreases in Metered Parking Fees.* Any decrease in the Metered Parking Fee by the City in an amount that is less than fifteen percent (15%) of the applicable Metered Parking Fee prior to such reduction shall result in a Compensation Event requiring the payment of Concession Compensation determined pursuant to the methodology set forth in Schedule 4. Any decrease in the Metered Parking Fee in an amount that is equal to or greater than fifteen (15%) of the applicable Metered Parking Fee prior to such reduction shall result in an Adverse Action and, if so elected by the Concessionaire pursuant to Section 14.1(b), require the payment of AA-Compensation determined pursuant to the methodology set forth in Schedule 4. Any failure to increase the new Metered Parking Fee pursuant to Schedule 5 for each remaining Year under the Term shall result in an Adverse Action and, if so elected by the Concessionaire pursuant to Section 14.1(b), require the payment of AA-Compensation.

(ii) *Increases in Metered Parking Fees.* The City shall not increase the Metered Parking Fees without the prior written consent of the Concessionaire. If the Concessionaire grants such consent, the City and Concessionaire shall negotiate, in good faith, the allocation of Metered Parking Revenue resulting from any incremental increase in the Metered Parking Fee (other than the Regular Rate Adjustment) including any Metered Parking Revenue derived from the temporary increase in the Metered Parking Fee related to Special Events (but, for the avoidance of doubt, not the Metered Parking Revenue derived from the increased usage of the Metered Parking System during any Special Event were the Metered Parking Fee not to be temporarily increased).

##### **(b) *Changes in Period of Operation.***

(i) *Decreases in Period of Operation.* Any decrease in the Period of Operation of the Metered Parking Spaces that is less than fifteen percent (15%) of the applicable Period of Operation prior to such reduction shall result in a Compensation Event requiring the payment of compensation determined pursuant to the methodology set forth in Schedule 4. Any decrease in the Period of Operation equal to or greater than fifteen percent (15%) of the applicable Period of Operation prior to such reduction shall result in an Adverse Action. For the avoidance of doubt, any change in the period of a No Parking Zone or the designation of any new No Parking Zone shall be deemed a decrease in the Period of Operation for the relevant Metered Parking Spaces.

(ii) *Increases in Period of Operation.* The City shall not increase any Period of Operation without the prior written consent of the Concessionaire. If the Concessionaire grants such consent, the City and Concessionaire shall negotiate, in good faith, the sharing of Metered Parking Revenue resulting from any increase in the Period of Operation.

(c) *Changes in Period of Stay.*

(i) *Approval of Changes in Period of Stay.* The City shall not change any Period of Stay without the prior written consent of the Concessionaire.

(ii) *Resulting Concessionaire Compensation or Revenue Sharing.* Subject to Section 7.9(c)(i), the City and Concessionaire shall negotiate, in good faith, the sharing of Metered Parking Revenue resulting from any increase in the Period of Stay or any Concessionaire Compensation, in accordance with Section 15.3, resulting from any decrease in the Period of Stay.

(d) *Changes Impacting Parking Enforcement Revenues.* Any change to Section 4 or 5 of Schedule 5 resulting in a reduction of the applicable fine or the failure to increase such fines as set forth therein or any other modification to the enforcement mechanism set forth herein that materially impacts the Metered Parking System, shall be a Compensation Event.

(e) *Payments.* Notwithstanding anything herein to the contrary, any Concessionaire Compensation or AA-Compensation, or any payment required to be made by the Concessionaire to the City in accordance with this Section 7.9, shall be paid to such Party quarterly within ten (10) Days of the beginning of such Quarter.

**Section 7.10. Right to Challenge.** Unless otherwise stated, if a Party objects to any determination made by the other Party pursuant to this Article 7, the objecting Party shall have the right to submit such determination (at any time including after the date of such determination) for resolution by technical arbitration pursuant to Section 19.7.

## **ARTICLE 8**

### **REPORTING; AUDITS; INSPECTIONS**

#### **Section 8.1. Reports.**

(a) *Incident Management and Notifications.* The Concessionaire shall provide notice to the City of all emergencies within twelve (12) hours of being known to the Concessionaire or the Operator and promptly provide notice to the City of all material accidents and incidents occurring with respect to the Metered Parking System, of all customers claims or potential claims in excess of Twenty-Five Thousand Dollars (\$25,000) made by or against the Concessionaire, or all other claims or potential claims in excess of One Hundred Thousand Dollars (\$100,000) that the Concessionaire reasonably expects to make against, or to be made against it by, third parties.

- (b) *Environmental Incident Management and Notifications.* The Concessionaire shall provide notice to the City within twelve (12) hours following the Concessionaire's becoming aware of the discharge, dumping, spilling (accidental or otherwise) of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Substances occurring with respect to the Metered Parking System, the time, the agencies involved, the damage that has occurred and the remedial action taken (to the extent applicable). The Concessionaire shall be financially responsible and shall pay the costs and expenses of any remediation to the extent required by Environmental Laws as a result of any such discharge, dumping or spilling of Hazardous Substances caused by the willful misconduct or negligent action of, or permitted by the negligent inaction of, the Concessionaire or any of its Representatives. For the avoidance of doubt, the City shall be responsible for environmental matters relating to the Metered Parking Spaces, except to the extent that such matters are Assumed Liabilities or were caused by the Concessionaire or any of its Representatives.
- (c) *Financial Reports.* The Concessionaire shall deliver to the City within one hundred eighty (180) Days after the end of each Year a copy of the audited balance sheets of the Concessionaire at the end of each such Year, and the related audited statements of income, changes in equity and cash flows for such Year, including in each case the notes thereto, together with the report thereon of the independent certified public accountants of the Concessionaire, in each case in a manner and containing information consistent with the Concessionaire's current practices and certified by the Concessionaire's chief financial officer that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements.

## **Section 8.2. Information.**

- (a) *Furnish Information.* At the request of the City, the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by the City, furnish or cause to be furnished) to the City all non-confidential and non-proprietary Information relating to the Metered Parking System Operations, this Agreement or the Metered Parking System as may be specified in such request and as shall be in the possession or control of the Concessionaire or its Representatives, and (ii) permit the City, after giving ten (10) Business Days' prior notice to the Concessionaire (which notice shall identify the Persons the City requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview) request Concessionaire's approval, which shall not be unreasonably withheld, to discuss the obligations of the Concessionaire under this Agreement with any of the directors, officers,

employees or managers of the Concessionaire, the Operator or their respective Representatives at times and places acceptable to all attendees (it being agreed that the Concessionaire shall have the right to be present during any such discussions with the Operator or Representatives of the Concessionaire or the Operator), for the purpose of enabling the City to determine whether the Concessionaire is in compliance with this Agreement, provided that, in the case of investigations of possible criminal conduct or City ordinance violations, no prior notice shall be required to the Concessionaire and the Concessionaire shall not have the right to be present during any discussions with the Operator or Representatives of the Concessionaire or the Operator. For the avoidance of doubt, this Section 8.2(a) does not impose a requirement to retain Information not otherwise retained in the normal course of business or required to be retained by applicable Law.

- (b) *Confidentiality.* Unless disclosure is required by applicable Law, the City shall keep strictly confidential any Information obtained from the Concessionaire or its Representatives and shall use such Information strictly for the limited purposes permitted in this Agreement; provided, however, that the City shall have the right to determine, in its reasonable discretion, whether applicable Law requires disclosure of any such Information; provided further that in the event the City determines that applicable Law does require its disclosure, the City shall provide reasonable notice to, and shall consult with, the Concessionaire prior to disclosure of such Information. In the event that the Concessionaire requests the City to defend an action seeking the disclosure of Information that the City determines to be confidential pursuant to this Section 8.2(b), the Concessionaire shall reimburse the City for the reasonable costs and expenses (including attorneys' fees of the prevailing party) incurred by the City in defending any such action. Notwithstanding anything to the contrary herein, the City and the Concessionaire may disclose the United States federal tax treatment and tax structure of the Transaction.

### **Section 8.3. Inspection, Audit and Review Rights of the City.**

- (a) *Audit Right.* In addition to the rights set out in Section 8.2, the City may, at all reasonable times, upon ten (10) Business Days' prior notice, except in the case of investigations of possible criminal conduct or City ordinance violations, in which case no prior notice shall be required, cause a Representative designated by it to, carry out an Audit and Review of the Information required to be maintained or delivered by the Concessionaire under this Agreement in connection with the performance of the Metered Parking System Operations for the purpose of verifying the information contained therein and shall be entitled to make copies thereof and to take extracts therefrom, at the City's expense, but, in any event, subject to Section 8.2(b). The Concessionaire shall, at reasonable times, make available or cause to be made available to the City or its designated Representative such information and material as may reasonably be required by the City or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by the City in connection with

the same; provided, however, that such Audit and Review rights are limited to one audit and review per Year.

- (b) *Inspection Right.* The City and its Representatives shall, at all reasonable times and upon reasonable prior notice, have access to the Metered Parking System and every part thereof (provided that no access is permitted to cash collections, Metering Devices keys and locks, or any software and intangibles) and the Concessionaire, at the reasonable cost and expense of the Concessionaire, shall and shall cause its Representatives to, furnish the City with every reasonable assistance for inspecting the Metered Parking System and the Metered Parking System Operations for the purpose of Auditing the Information or ascertaining compliance with this Agreement and applicable Law.
- (c) *Tests.* The City and its Representatives shall, with the prior consent of the Concessionaire (which shall not be unreasonably withheld, conditioned or delayed), except in the case of investigations of possible criminal conduct or City ordinance violations, in which case no consent shall be required, be entitled, at the sole cost and expense of the City, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Metered Parking System or the Metered Parking System Operations as the City may reasonably determine to be necessary in the circumstances and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause its Representatives to, furnish the City or its Representatives with reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.
- (d) *No Waiver.* Failure by the City or its Representatives to inspect, review, test or Audit the Concessionaire's responsibilities under this Agreement or any part thereof, or the performance by the Concessionaire of the Metered Parking Services, or the Information, shall not constitute a waiver of any of the rights of the City hereunder or any of the obligations or liabilities of the Concessionaire hereunder. Inspection, review, testing or Audit not followed by a notice of Concessionaire Default shall not constitute a waiver of any Concessionaire Default or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.
- (e) *No Undue Interference.* In the course of performing its inspections, reviews, tests and Audits hereunder, the City shall minimize the effect and duration of any disruption to or impairment of the Metered Parking System Operations or the Concessionaire's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews, tests and Audits being performed, except as necessary in the case of investigations of possible criminal conduct or City ordinance violations.
- (f) *Protection of Concessionaire Information and Facilities.* The City shall ensure that all of its Representatives shall comply with the confidentiality obligations herein and as reasonably requested by Concessionaire the City shall require its

Representatives to execute non-disclosure agreements approved by Concessionaire. Concessionaire must consent to any Representative who is not an employee of the City prior to said Representative receiving access to the Concessionaire information, software, facilities or equipment including the Metered Parking System and Metered Parking System Assets.

**Section 8.4. Audits, Assistance, Inspections and Approvals.** Wherever in this Agreement reference is made to the City or its Representatives providing assistance, services, Approvals or consents to or on behalf of the Concessionaire or its Representatives or to the City or its Representatives performing an Audit or inspecting, testing, reviewing or examining the Metered Parking System, the Metered Parking System Operations or any part thereof or the books, records, Documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or its Representatives, such undertaking by the City or its Representatives shall not relieve or exempt the Concessionaire from, or represent a waiver of, any requirement, liability, Concessionaire Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on the City or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

## **ARTICLE 9 REPRESENTATIONS AND WARRANTIES**

**Section 9.1. Representations and Warranties of the City.** The City makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire and its Representatives are relying upon such representations and warranties in entering into this Agreement:

- (a) *Organization.* The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Indiana.
- (b) *Power and Authority.* The City Council of the City has (i) duly adopted the Metered Parking System Ordinance, which remains in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement and (iii) duly authorized and approved the performance by the City of its obligations contained in this Agreement. The City has the power and authority to adopt the Metered Parking System Ordinance, to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.
- (c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the City and constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.



- (d) *Title.* At the Time of Closing, the City will have good and sufficient title to the Metered Parking System necessary for the Metered Parking System Operations pursuant to this Agreement, subject only to Permitted City Encumbrances. Subject to any and all Permitted City Encumbrances existing at the Time of Closing, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the City to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber the Metered Parking System. Subject to any and all permitted City Encumbrances, the recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests and other matters that affect title to the Metered Parking System (or any portion thereof) do not materially adversely affect the Concessionaire's ability to operate the Metered Parking System in accordance with the terms hereof. No indebtedness for borrowed money of the City is or will be secured by any right or interest in the Metered Parking System or the revenues or income therefrom and no judgment lien exists or shall exist in any revenue derived from or generated with respect to the Metered Parking System.
- (e) *No Conflicts.* The adoption of the Metered Parking System Ordinance, execution and delivery of this Agreement by the City, the consummation of the transactions contemplated hereby (including the operation of the Metered Parking System in accordance with the terms of this Agreement) and the performance by the City of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the City under (i) any applicable Law or (ii) any agreement, instrument or document to which the City is a party or by which it is bound.
- (f) *Consents.* No Consent is required to be obtained by the City from, and no notice or filing is required to be given by the City to or made by the City with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the City of this Agreement or the consummation of the transactions contemplated hereby.
- (g) *Compliance with Law; Litigation; Environmental Matters.*

(i) The City has operated and is operating the Metered Parking System in compliance, in all material respects, with all applicable Laws and the City is not in breach of any applicable Law that would have a material adverse effect on the operations of the Metered Parking System or on the Concessionaire Interest. There are no Authorizations from any Governmental Authority necessary for the operation of the Metered Parking System as currently being operated.

(ii) There is no action, investigation, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the City's knowledge, threatened against the City prior to or at the Time of Closing, which will have a Material

Adverse Effect on the operations of the Metered Parking System. As of the date of this Agreement, there is no action, investigation, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the best of the City's knowledge, threatened against the City which could materially affect the validity or enforceability of this Agreement.

(iii) No environmental permits are necessary for the current operation of the Metered Parking System by the City.

- (h) *Financial Information.* The financial information of the City relating to the Metered Parking System for the periods ended December 31, 2005, 2006, 2007, 2008 and 2009, and for the stub period from January 1, 2010 to August 31, 2010, all attached hereto as Schedule 9, fairly presents the financial position and results from operations, including revenues, operating expenses and net revenues, of the Metered Parking System (including the Parking Enforcement Revenue) as of the dates and for the periods stated in such financial information in accordance with generally accepted accounting principles.
- (i) *Metered Parking System Contracts.* Each Metered Parking System Contract is in full force and effect, has been made available for review by the Concessionaire and subject to Section 2.5(f) that was not selected to be assumed by the Concessionaire shall be terminated at the Time of Closing in accordance with Section 2.5(f) without liability or obligation to the Concessionaire. The City is not in material breach of its obligations under any Metered Parking System Contract, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof, and to the knowledge of the City no other party to any Metered Parking System Contract is in material breach of its obligations under any Metered Parking System Contract, and no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, would or is reasonably be expected to constitute a material breach thereof. The Metered Parking System Contracts are all of the material contracts and agreements (i) to which the City is a party that relate to the Metered Parking System Operations or (ii) that bind the Metered Parking System in any material respect.
- (j) *Absence of Changes.* Since December 31, 2009, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect.
- (k) *Brokers.* Except for Morgan Stanley, whose fees will be paid by the City, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the City who might be entitled to any fee or commission from the City in connection with the transactions contemplated by this Agreement.
- (l) *Accuracy of Information.* The factual and past historical information regarding the Metered Parking System, its operations and the Metered Parking System Assets that the City provided to the Concessionaire in the virtual data room

labeled "Project Green Virtual Data Room" at [www.dealinteractive.com](http://www.dealinteractive.com) was accurate in all material respects at the time such information was provided and continues to be accurate in all material respects as of the Closing Date.

- (m) *Outstanding Parking Enforcement Revenue.* As of the Bid Date, the amount of Parking Enforcement Revenue generated after January 1, 1998 but not collected is \$8,015,120. The City makes no representations or warranties as to the collectability of the Parking Enforcement Revenue, including the inability to collect Parking Enforcement Revenue due to the expiration of any applicable statute of limitations.

**Section 9.2. Representations and Warranties of the Concessionaire.** The Concessionaire makes the following representations and warranties to the City (and acknowledges that the City is relying upon such representations and warranties in entering into this Agreement):

- (a) *Organization.* The Concessionaire is duly organized, validly existing and in good standing under the laws of the state of its organization. The capital stock, units, partnership or membership interests and other equity interests or securities of the Concessionaire (including options, warrants and other rights to acquire any such equity interests) are owned by the Persons set forth in the written certification that the Concessionaire delivered to the City prior to the date hereof.
- (b) *Power and Authority.* The Concessionaire has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.
- (c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.
- (d) *No Conflicts.* The execution and delivery of this Agreement by the Concessionaire, the consummation of the transactions contemplated hereby and the performance by the Concessionaire of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Concessionaire under (i) any applicable Law, (ii) any material agreement, instrument or document to which the Concessionaire is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Concessionaire.
- (e) *Consents.* No Consent is required to be obtained by the Concessionaire from, and no notice or filing is required to be given by the Concessionaire to or made by the

Concessionaire with, any Person (including any Governmental Authority) in connection with the execution and delivery by the Concessionaire of this Agreement or the consummation of the transactions contemplated hereby, except for such consents which have been obtained and notices which have been given as of the date hereof.

- (f) *Compliance with Law; Litigation.* The Concessionaire is not in breach of any applicable Law that could have a material adverse effect on the operations of the Metered Parking System. Neither the Concessionaire nor any Affiliate of the Concessionaire is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the City may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Concessionaire's knowledge, threatened against the Concessionaire prior to or at the Time of Closing, which will have a material adverse effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.
- (g) *RFQ.* All of the information in the response to the Request for Qualifications Indianapolis Parking System delivered by or on behalf of the Concessionaire to the City in connection with the execution of this Agreement is true, accurate, and correct in all material respects (except for such information that has been subsequently supplemented or that related to a specified date).
- (h) *Operator.* To the extent the Operator is not the Concessionaire, the Concessionaire represents and warrants as follows: To the best knowledge of the Concessionaire: (i) the Operator is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) the capital stock of the Operator (including options, warrants and other rights to acquire capital stock) is owned by the Persons set forth in the written certification that the Concessionaire delivered to the City prior to the date of this Agreement; (iii) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by the Concessionaire; (iv) the Operator has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the Metered Parking System Operations in accordance with this Agreement; and (v) the Operator is not in breach of any applicable Law that would have a Material Adverse Effect.
- (i) *Brokers.* Except for any broker or advisor whose fees will be paid by the Concessionaire or its Affiliates, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Concessionaire or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

**Section 9.3. Non-Waiver.** No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

**Section 9.4. Survival.**

- (a) *City's Representations and Warranties.* The representations and warranties of the City contained in Section 9.1 shall survive and continue in full force and effect for the benefit of the Concessionaire as follows: (i) as to the representations and warranties contained in Sections 9.1(a) through 9.1(g), inclusive, without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 20.1, prior to the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.
- (b) *Concessionaire's Representations and Warranties.* The representations and warranties of the Concessionaire contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the City as follows: (i) as to the representations and warranties contained in Sections 9.2(a) through 9.2(h), inclusive, without time limit; and (ii) as to all other matters, for a period of twenty-four (24) months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 20.1, before the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable party.

**ARTICLE 10**  
**FINANCE OBLIGATIONS**

**Section 10.1. Concessionaire's Obligations.** Except with respect to the City's funding of costs and expenses related to City Directives as contemplated by Section 5.1, Adverse Actions as contemplated by Section 14.1 and Compensation Events as contemplated by Section 15.3, the Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement.

**Section 10.2. City's Obligations.** The City shall, to the extent consistent with applicable Law and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. The City's cooperation may include reviewing, Approving and executing documents which

substantiate the terms of this Agreement (including any consents and agreements necessary to confirm that the debt evidenced by the relevant financing constitutes Collateral Assignment Debt) and making information and material available to the Concessionaire's lenders to facilitate financing to the extent permitted by applicable Law and contractual obligations with third parties and to the extent reasonable in the circumstances. If requested to do so by the Concessionaire, the City shall, at the sole cost and expense of the Concessionaire, use its reasonable efforts to cause the City's independent public accountants to consent to the preparation, use and inclusion of certain financial information regarding the Metered Parking System in connection with the Concessionaire's public or private offering of securities, as the case may be. In addition, the City shall, promptly upon the request of the Concessionaire or any Collateral Assignee, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated Representative of the City. Nothing herein shall require the City to incur any additional obligations or liabilities (unless the City shall have received indemnification, as determined in the City's discretion, with respect thereto) or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

**Section 10.3. Concessionaire's Obligation for Estoppel Certificates.** The Concessionaire shall, promptly upon the request of the City, execute and deliver to the City, or any of the parties specified by the City, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated Representative of the Concessionaire. Nothing herein shall require the Concessionaire to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement or applicable Law.

**Section 10.4. Prohibited Tax Shelter Transactions.** The Concessionaire covenants and agrees that it shall not enter into any lease, sublease, concession, management agreement, operating agreement or other similar arrangement or other transaction that would cause the City to become a party to a "prohibited tax shelter transaction" within the meaning of Section 4965 of the Internal Revenue Code of 1986 (it being agreed that, for purposes of this Section 10.4, the City shall not be treated as having become a party to any such transaction solely by virtue of the execution of this Agreement). A violation of this Section 10.4 by the Concessionaire shall entitle the City to (a) recover from the Concessionaire, to the extent permitted by applicable Law, the amount of any Tax liability to which the City or any City official is subject and (b) require the Concessionaire, at the Concessionaire's expense, to prepare timely all statements and returns, and to maintain all lists and similar information that the City becomes obligated to disclose, file or maintain with any taxing authority or participant or otherwise as a result of such transaction.

**Section 10.5. Failure to Make City Payments.** In the event that the City fails to pay the Concessionaire any amount required under this Agreement, whether as a result of a failure of the City to appropriate the necessary funds or otherwise, the Concessionaire shall have the right to retain all Metered Parking Revenue and Parking Enforcement Revenue derived from the Metered Parking Spaces, including, for the avoidance of doubt, any City Metered Parking Revenue and other amounts that would have been payable to the City pursuant to the terms of this Agreement, to the extent and in the amounts required for the City to comply with such payment obligations.

## **ARTICLE 11 COMPLIANCE WITH LAWS**

**Section 11.1. Compliance with Laws.** Concessionaire agrees to comply with all federal, state, and local laws, rules, and regulations applicable to Concessionaire in performing work pursuant to this Agreement, including those relating to discrimination in employment, conflicts of interest, prevailing wages, public notice, accounting records and requirements. The Mayor's Executive Order Number 1, 1987, and Section 581-101 of the Revised Code of the Consolidated City and County are hereby incorporated by reference and made as fully a part of this Agreement as if herein set out verbatim. Unless otherwise specified, this Agreement shall be governed by the laws of the United States, the State of Indiana, and by all applicable municipal ordinances and codes of the consolidated City as shall be in full force and effect upon the date this Agreement is executed.

### **Section 11.2. Non-Discrimination; MBE/WBE.**

- (a) Concessionaire certifies for itself and all its subcontractors compliance with existing laws of the State of Indiana and the United States regarding prohibition of discrimination in employment practices on the basis of race, sex, creed, color, religion, national origin, ancestry, age, handicap, disabled veterans status and Vietnam-era veteran status.
- (b) Concessionaire and any subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, creed, color, religion, national origin, ancestry, age, handicap, disabled veterans status and Vietnam-era veteran status.
- (c) Concessionaire certifies for itself and all its subcontractors compliance with existing laws of the City and the United States regarding the utilization of Minority-Owned and Women-Owned Business Enterprises. Concessionaire further certifies that it strongly encourages the use of small businesses, minority-owned businesses and women-owned businesses in its operations.

### **Section 11.3. Federal Non-Discrimination Laws.**

The Concessionaire shall comply with all applicable federal Laws regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. (1981); (ii) the Civil Rights Act of 1991, P.L. 102 166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101 6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793 794 (1981); and (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (1990).

**Section 11.4. Non-Collusion.** By signing this Agreement, Concessionaire duly swears, affirms, and warrants that it is the contracting party, and that it has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation, or partnership represented by it, directly or indirectly entered into or offered to enter into any combination, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

**Section 11.5. Conflict of Interest.** Concessionaire certifies and warrants to City that neither it nor any of its agents, representatives, or employees who will participate in any way in the performance of Concessionaire's obligations hereunder has or will have any conflict of interest, direct or indirect, with City during the performance of this Agreement.

**Section 11.6. Drug-Free Workplace Certification.** Concessionaire hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Concessionaire will give written notice to City within ten (10) Days after receiving actual notice that the Concessionaire or an employee of the Concessionaire has been convicted of a criminal drug violation occurring in the Concessionaire's workplace. The Concessionaire must at all times at its own cost and expense observe and comply, in all material respects, and cause the Metered Parking System Operations to observe and comply, in all material respects, with all applicable Laws now existing or later in effect that are applicable to it or such Metered Parking System Operations, including those Laws expressly enumerated in this Article 11, and those that may in any manner apply with respect to the performance of the Concessionaire's obligations under this Agreement. The Concessionaire must notify the City within seven (7) Days after receiving notice from a Governmental Authority that the Concessionaire may have violated any Laws as described above.

## **ARTICLE 12 INDEMNIFICATION**

**Section 12.1. Indemnification by the Concessionaire.** The Concessionaire shall indemnify and hold harmless the City and each of its Representatives from and against any Losses actually suffered or incurred by the City or any such Representative, based upon, arising out of, occasioned by or attributable to (i) any failure by the Concessionaire, the Operator or each of their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.4(b), any breach by the Concessionaire of its representations or warranties set forth herein, (ii) any Assumed Liabilities, (iii) any Tax or recording charge attributable to any Transfer of the Concessionaire Interest or any part thereof by the Concessionaire or (iv) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Concessionaire or its Representatives in connection with this Agreement, any Transfer of the Concessionaire Interest or any part thereof or any other matter affecting the Metered Parking System; provided, however, that, except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three years following the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.



**Section 12.2. Indemnification by the City.** The City shall indemnify and hold harmless the Concessionaire and each of its Representatives and Collateral Assignee against and from and against any Losses actually suffered or incurred by the Concessionaire or any such Representative or Collateral Assignee, based upon, arising out of, occasioned by or attributable to (i) any failure by the City or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.4(a), any breach by the City of its representations or warranties set forth herein, (ii) any Excluded Liabilities, (iii) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the City or any of its Representatives in connection with this Agreement, or any other matter affecting the Metered Parking System; provided, however, that, except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three (3) years of the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

**Section 12.3. Agency for Representatives.** Each of the City and the Concessionaire agrees that it accepts each indemnity in favor of any of its Representatives, as agent and trustee of that Representative and agrees that each of the City and the Concessionaire may enforce an indemnity in favor of its Representatives on behalf of that Representative. As used in this Section 12.3, the term "Representative," in the case of the Concessionaire, includes the Collateral Assignee.

**Section 12.4. Third Party Claims.**

- (a) *Notice of Third Party Claim.* If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than thirty (30) Days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.
- (b) *Defense of Third Party Claim.* The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than thirty (30) Days after receiving notice of that Third Party Claim (the "Notice Period"). The Indemnifier's right to do so shall be subject to the rights of any insurer or other Party who has potential liability in respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defense. The Indemnified Party shall co-operate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection

therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

- (c) *Assistance for Third Party Claims.* The Indemnifier and the Indemnified Party will use all reasonable efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the "Defending Party"), (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim, and (ii) all Documents, records and other materials in the possession of such party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise co-operate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such Documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.
- (d) *Settlement of Third Party Claims.* If an Indemnifier elects to assume the defense of any Third Party Claim in accordance with Section 12.4(b), the Indemnifier shall not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of such Third Party Claim. However, if the Indemnifier fails to take reasonable steps necessary to defend diligently such Third Party Claim within thirty (30) Days after receiving notice from the Indemnified Party that the Indemnified Party bona fide believes on reasonable grounds that the Indemnifier has failed to take such steps, the Indemnified Party may, at its option, elect to assume the defense of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith. The Indemnified Party shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Indemnifier unless such settlement or compromise is made without any liability to, and does not require any action on the part of, the Indemnifier.

**Section 12.5. Direct Claims.** Any Direct Claim shall be asserted by giving the Indemnifier reasonably prompt notice thereof, but in any event not later than ninety (90) Days after the Indemnified Party becomes aware of such Direct Claim. The Indemnifier shall then have a period of thirty (30) Days within which to respond in writing to such Direct Claim. If the Indemnifier does not so respond within such thirty (30)-Day period, the Indemnifier shall be deemed to have rejected such Claim, and in such event the Indemnified Party may submit such Direct Claim to the dispute resolution process set forth in Article 19.

**Section 12.6. Failure to Give Timely Notice.** A failure to give timely notice in accordance with this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure. However, this

Section 12.6 shall have no effect whatever on the survival provisions set out in Section 9.4 and the rights of the Parties with respect thereto.

**Section 12.7. Reductions and Subrogation.** If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of an indemnity payment hereunder (an "Indemnity Payment") is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred in connection therewith), together with interest thereon from the date of payment thereof at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier. Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party's rights against such third party.

**Section 12.8. Payment and Interest.** All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss, liability or expense in respect of a Loss for which the Indemnifier is liable to make payment pursuant to this Article 12, to the date of payment by the Indemnifier to the Indemnified Party.

**Section 12.9. Limitation on Certain Claims.** No Claim may be made by either the Concessionaire or its Representatives against the City under Section 12.2 for the breach of any representation or warranty made or given by the City in Section 9.1 or the City or its Representatives against the Concessionaire under Section 12.1 for the breach of any representation or warranty made or given by the Concessionaire in Section 9.2 unless (i) the Loss suffered or incurred by such Party or its Representatives in connection with such breach is in excess of Ten Thousand Dollars (\$10,000) and (ii) the aggregate of all Losses suffered or incurred by such Party or its Representatives in connection with breaches of representations and warranties in Section 9.1 or in Section 9.2, as applicable, exceeds Five Hundred Thousand Dollars (\$500,000) in the aggregate, in which event the amount of all such Losses in excess of such amount may be recovered by such Party or its Representatives; provided, however, that the maximum aggregate liability of the City to the Concessionaire or its Representatives, or the Concessionaire to the City and its Representatives, in respect of such Losses shall not exceed thirty percent (30%) of the Closing Consideration; provided further that this Section 12.9 shall not apply to Claims for the breach of the representations or warranties in Section 9.1(a), (b), (c), (d), (e), (f) or (g) with respect to the City, and Section 9.2(a), (b), (c), (d), (e), (f), or (g) with respect to the Concessionaire and to Claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 9.1 with respect to the City and Section 9.2 with respect to the Concessionaire.

#### **Section 12.10. Other Matters.**

- (a) *Waiver of Limits.* To the extent permissible by applicable law, the Concessionaire waives any limits to the amount of its obligations to defend, indemnify, hold harmless or contribute to any sums due under any Losses, including any claim by any employee of Concessionaire, that may be subject to the Indiana Workers Compensation Act (Indiana Code 22-3-1-1 et seq).
- (b) *Losses Net of Insurance.* For purposes of this Article 12, the amount of any Losses for which indemnification is provided hereunder shall be net of any amounts recovered by the Indemnified Party under insurance policies with respect to such Losses, it being understood that the obligations of the Indemnified Party hereunder shall not be so reduced to the extent that any such recovery results in an increase in the Indemnified Party's insurance premiums, or results in any other additional cost or expense to any such Indemnified Party.

**Section 12.11. Offset Rights; Limitations on Certain Damages.** Each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights as against such Party or any part thereof or interest therein contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets. In no event shall any Party be liable to the other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach and provided this limitation on consequential damages shall not be applicable to the Concessionaire's rights of recovery for lost Metered Parking Revenue).

**Section 12.12. Survival.** This Article 12 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

### **ARTICLE 13 INSURANCE**

**Section 13.1. Insurance Coverage Required.** The Concessionaire shall provide and maintain at the Concessionaire's own expense, or cause to be provided and maintained, during the Term and during any time period following expiration if the Concessionaire is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring the Metered Parking System and all Metered Parking System Operations (the "Required Coverages"). Required limits may be achieved through a combination of primary and excess liability insurance.

- (a) *Workers' Compensation and Employer's Liability.* The Concessionaire shall provide or cause to be provided Workers' Compensation Insurance, as prescribed by applicable Law, covering all employees who agree to provide a service under this Agreement and Employer's Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000) each accident or illness or disease.
- (b) *Commercial General Liability (Primary and Umbrella).* The Concessionaire shall provide or cause to be provided Commercial General Liability Insurance or equivalent with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, personal injury and property damage liability. Coverage shall include the following: all premises and operations, products/completed operations, separation of insureds, defense and contractual liability. The City is to be included as an additional insured on a primary, non-contributory basis for any liability arising under or in connection with this Agreement.
- (c) *Automobile Liability (Primary and Umbrella).* When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, the Concessionaire shall provide or cause to be provided Automobile Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence or accident for bodily injury and property damage. The City is to be included as an additional insured on a primary, non-contributory basis.
- (d) *Professional Liability.* When any architects, engineers, construction managers or any other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering the Concessionaire's negligent acts, errors or omissions shall be maintained with limits of not less than One Million Dollars (\$1,000,000) per claims made basis. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two years.
- (e) *Property.* The Concessionaire shall be responsible for all loss or damage to the Metered Parking System at full replacement cost unless such loss or damage was caused by, or resulted from any action by, the City or any of its Representatives. The Concessionaire shall be responsible for all loss or damage to City property caused by, or resulting from any action by, the Concessionaire or any of its Representatives at full replacement cost. The Concessionaire shall be responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by the Concessionaire unless such loss or damage was caused by, or resulted from any action by, the City or any of its Representatives. The Concessionaire shall not be required to have, obtain or maintain insurance coverage for property loss or damage to City property.
- (f) *Railroad Protective Liability.* When any work is to be done adjacent to or on railroad or transit property and if such insurance is required, the Concessionaire shall provide, or cause to be provided, with respect to the operations that the

Concessionaire or Contractors perform, Railroad Protective Liability Insurance in the name of the applicable railroad or transit entity. The policy shall have limits of not less than the requirement of the operating railroad for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof. If such work is subcontracted out to contractors or subcontractors, then Concessionaire shall not be required to maintain such insurance but may instead require its contractors or subcontractors performing the work adjacent to or on railroad or transit property to carry such railroad liability insurance.

### **Section 13.2. Additional Requirements.**

- (a) *Evidence of Insurance.* The Concessionaire shall deliver or cause to be delivered to the City, and any other such City Department designated in writing by the City, original standard ACCORD form Certificates of Insurance evidencing the Required Coverages on or before the Closing Date, and shall provide or cause to be provided, promptly following renewal and not more than five (5) Business Days following renewal of the then current coverages (or such other period as is agreed to by the City), Renewal Certificates of Insurance, or such similar evidence, if such coverages have an expiration or renewal date occurring during the Term. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from the Concessionaire shall not be deemed to be a waiver by the City. The Concessionaire shall advise all insurers of provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve the Concessionaire of the obligation to provide insurance as specified herein. Except as otherwise expressly set forth herein, each Required Coverage may be reviewed by the City for compliance with the terms of this Agreement. Each Required Coverage shall be signed by the insurer responsible for the risks insured against or by the Concessionaire's authorized broker. All Required Coverages shall be placed with insurers licensed to do business in the State of Indiana; provided that all such insurers, at a minimum, shall have a rating of A(VII) or better by A.M. Best Company (unless the City consents to waive this requirement).
- (b) *Notice of Cancellation, Material Change or Violation.* All Required Coverages shall provide for thirty (30) Days' (or in the case of cancellation for non-payment of premiums, ten (10) Days') prior written notice to be given to the City by the insurer in the event coverage is substantially changed, canceled or non-renewed. The City shall be permitted (but not obligated) to pay any delinquent premiums before the cancellation date specified by the insurer in any notice of cancellation for non-payment of premium in order to maintain such coverage in full force and effect and the Concessionaire shall reimburse the City for any delinquent premiums paid by the City on demand without any Days of grace and without prejudice to any other rights and remedies of the City hereunder. The

Concessionaire shall maintain the Required Coverage while performing the work for this Agreement.

- (c) *Deductibles.* All Required Coverages may contain deductibles or self-insured retentions not to exceed amounts reasonably acceptable to the City. Any and all deductibles or self-insured retentions on Required Coverages shall be borne by the Concessionaire or its Contractors and subcontractors shall be responsible for its own deductibles and/or self-insured retentions.
- (d) *Inflation Adjustment.* The amounts of coverage required by Section 13.1 shall be reasonably Adjusted for Inflation each succeeding fifth (5th) anniversary of the Closing Date; provided, however that any such requested increase shall be subject to the prior written consent of the Concessionaire.
- (e) *Waiver of Subrogation by Insurers.* The commercial general liability and business automobile liability insurance shall include a waiver by the insurer of its rights of subrogation against the City, its employees, elected officials, or representatives.
- (f) *City's Right to Insure.* If the Concessionaire fails to obtain and maintain or cause to be obtained and maintained the insurance required by this Article 13, the City shall have the right (without any obligation to do so), upon two (2) Business Days' notice to the Concessionaire in a non-emergency situation or forthwith in an emergency situation and without assuming any obligation in connection therewith, to effect such insurance and all costs and expenses of the City in connection therewith shall be payable by the Concessionaire to the City on demand without any Days of grace and without prejudice to any other rights and remedies of the City hereunder. Such insurance taken out by the City shall not relieve the Concessionaire of its obligations to insure hereunder and the City shall not be liable for any loss or damage suffered by the Concessionaire in connection therewith.
- (g) *No Limitation as to Concessionaire Liabilities.* The Concessionaire expressly understands and agrees that any coverages and limits furnished by the Concessionaire shall in no way limit the Concessionaire's liabilities and responsibilities specified within this Agreement or by Law.
- (h) *No Contribution by City.* The Concessionaire expressly understands and agrees that any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Concessionaire under this Agreement.
- (i) *Insurance Not Limited by Indemnification.* The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.
- (j) *Insurance Requirements of Contractors and Subcontractors.* The Concessionaire shall require in each contract with any Contractor or subcontractor that such Contractor obtain coverages reasonably comparable to the Required Coverages

that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract with the Contractor. Such coverages shall insure the interests of the City, its employees, elected officials and representatives, the Concessionaire and any other Contractors in respect of the applicable work being performed and shall be subject to the same (or comparable) coverage and administrative requirements as are imposed on the Concessionaire pursuant to this Agreement. When requested to do so by the City, the Concessionaire shall provide or cause to be provided to the City Certificates of Insurance with respect to such insurance coverages or such other evidence of insurance, as may be reasonably acceptable in form and content to the City.

- (k) *Cooperation.* The City and the Concessionaire shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance hereunder so as to expedite the release and dedication of proceeds of such insurance in the manner and for the purposes herein contemplated.
- (l) *City's Right to Modify.* The City shall have the right to modify, delete, alter or change insurance coverage requirements set forth in Section 13.1 (other than any property insurance, which pursuant to Section 13.1(f) is not required to be maintained) and this Section 13.2 to reflect known and established material changes in insurance coverages for operations comparable to the Metered Parking System Operations or known and established material changes in insurance exposures associated with the Metered Parking System provided that the Concessionaire shall not have any obligation to procure or maintain at its cost any additional insurance unless an independent insurance consultant shall have delivered to the Concessionaire its opinion to the effect that the additional coverages are required pursuant to the above-stated criteria and such additional coverages are commercially available at reasonable rates in terms of cost of premium and amount of deductibles. Notwithstanding anything to the contrary herein, if any insurance (including the limits or deductibles thereof) required to be maintained under this Agreement shall not be available at commercially reasonable rates, the Concessionaire shall have the right to request that the City consent to waive such requirement and the City shall not unreasonably withhold, condition or delay such consent. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates, provided that during the period of such waiver, the Concessionaire maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.

### **Section 13.3. Damage and Destruction.**

- (a) *Obligations of Concessionaire.* If all or any part of any of the Metered Parking System shall be destroyed or damaged during the Term in whole or in part by tornado or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concessionaire shall: (i) give the City notice thereof promptly



after the Concessionaire receives actual notice of such casualty; (ii) at its sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the "Casualty Cost"), proceed diligently to repair, restore or rebuild the same to the condition existing prior to the happening of such fire or other casualty (any such activity being a "Restoration"); and (iii) deposit all insurance proceeds received by the Concessionaire in connection with any Restoration with a Depositary; provided, however, that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depositary, then the Concessionaire shall also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (collectively, with any interest earned thereon, the "Restoration Funds"); provided further that the procedures of this clause (iii) of this Section 13.3(a) shall only apply to casualty events in which the cost of Restoration exceeds \$1,000,000.

- (b) *Rights of City.* If (i) the Concessionaire shall fail or neglect to commence the diligent Restoration of the Metered Parking System or the portion thereof so damaged or destroyed, (ii) having so commenced such Restoration, the Concessionaire shall fail to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion of any such Restoration by the Concessionaire, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the City may, but shall not be required to, complete such Restoration at the Concessionaire's expense and shall be entitled to be paid out of the Restoration Funds, but such payment shall not limit the Concessionaire's obligation to pay the City's reasonable Restoration expenses, less amounts received by the City from such Restoration Funds. In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concessionaire shall (x) account to the City for all amounts spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depositary to pay over to the City, within thirty (30) Days after demand therefor, the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or cancellation and (z) pay over or cause the Depositary to pay over to the City, within thirty (30) Days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depositary subsequent to such termination or cancellation. The Concessionaire's obligations under this Section 13.3(b) shall survive the expiration or termination of this Agreement.
- (c) *Payment of Restoration Funds to Concessionaire.* Subject to the satisfaction by the Concessionaire of all of the terms and conditions of this Section 13.3, the Depositary shall pay to the Concessionaire from time to time, any Restoration Funds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the City, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and the City in the collection of such monies, to be utilized by the Concessionaire solely for the Restoration, such payments to be made as follows:

(i) prior to commencing any Restoration, the Concessionaire shall furnish the City with an estimate of the cost of such Restoration, prepared by an architect or engineer;

(ii) the Restoration Funds shall be paid to the Concessionaire in installments as the Restoration progresses, subject to Section 13.3(c)(iii), based upon requisitions to be submitted by the Concessionaire to the Depository and the City in compliance with Section 13.3(d), showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Concessionaire; provided, however, that if any lien (other than a Permitted Concessionaire Encumbrance) is filed against the Metered Parking System or any part thereof in connection with the Restoration, the Concessionaire shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise); provided further that notwithstanding the foregoing, but subject to the provisions of Section 13.3(c)(iii), the existence of any such lien shall not preclude the Concessionaire from receiving any installment of Restoration Funds so long as such lien will be discharged with funds from such installment and at the time the Concessionaire receives such installment the Concessionaire delivers to the City and the Depository a release of such lien executed by the lienholder or and in recordable form;

(iii) the amount of any installment to be paid to the Concessionaire shall be the amount of Restoration Funds incurred by the Concessionaire in connection therewith, less all payments theretofore made to the Concessionaire out of the Restoration Funds less ten percent (10%) of such amount as a retainage (which ten percent (10%) shall (i) be reserved without duplication of any retainage reserved by the Concessionaire under its contracts for the Restoration work and (ii) shall be released to the Concessionaire upon completion of the Restoration work), except that such retainage shall not include any amounts for architects' or engineers' fees or permitting or other governmental fees in connection with the Restoration or with respect to each Contractor upon the final completion of each such Contractor's respective work, provided that the unapplied portion of the funds held by the Depository are sufficient to complete the Restoration; provided, however, that all disbursements to the Concessionaire shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depository are sufficient to complete the Restoration; and

(iv) except as provided in Section 13.3(b), upon completion of and payment for the Restoration by the Concessionaire, subject to the rights of any Collateral Assignee, the Depository shall pay the balance of the Restoration Funds, if any, to the Concessionaire; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Concessionaire shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 13.3(a)(iii).

(d) *Conditions of Payment.* The following shall be conditions precedent to each payment made to the Concessionaire as provided in Section 13.3(c):

(i) at the time of making such payment, no Concessionaire Default (other than any Concessionaire Default resulting from the occurrence of the damage or destruction for which such payment is being made or the result thereof) exists;

(ii) the Restoration shall be carried out under the supervision of the architect or engineer, and there shall be submitted to the Depositary and the City the certificate of the architect or engineer (or other evidence reasonably satisfactory to the City) stating that (A) the materials and other items which are the subject of the requisition have been delivered to the Metered Parking System (except with respect to requisitions for advance deposits permitted under Section 13.3(c)(iii)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's or other liens have been claimed, except for any mechanic's lien for claims that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such lien is delivered to the Depositary in accordance with Section 13.3(c)(ii)), or insured over by title insurance reasonably acceptable to the City, (B) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concessionaire, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement, (F) the balance of the Restoration Funds held by the Depositary will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion and (G) in the case of the final payment to the Concessionaire, the Restoration has been completed in accordance with this Agreement.

(e) *Payment and Performance Bonds.* If the Concessionaire obtains payment or performance bonds related to a Restoration (which the Concessionaire may or may not obtain in its discretion), the Concessionaire shall name the City and the Concessionaire and any Collateral Assignee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to the City promptly upon obtaining them.

(f) *Benefit of City.* The requirements of this Section 13.3 are for the benefit only of the City, and no Contractor or other Person shall have or acquire any claim against the City as a result of any failure of the City actually to undertake or complete any Restoration as provided in this Section 13.3 or to obtain the evidence, certifications and other documentation provided for herein.

(g) *Investment of Restoration Funds.* Restoration Funds deposited with a Depositary shall be invested and reinvested in Eligible Investments at the direction of the Concessionaire, and all interest earned on such investments shall be added to the Restoration Funds.

- (h) *Rights of Collateral Assignee.* The City acknowledges and agrees that any Restoration Funds not applied to a Restoration as provided in this Section 13.3 shall be subject to the lien or liens of any Collateral Assignment.

## **ARTICLE 14**

### **ADVERSE ACTIONS**

#### **Section 14.1. Adverse Action.**

- (a) An "Adverse Action" shall occur if the City, Marion County or the State of Indiana (or any subdivision or agency of any of the foregoing) takes any action or actions at any time during the Term (including enacting any Law) and the effect of such action or actions, individually or in the aggregate, is reasonably expected (i) to be principally borne by the Concessionaire or other operators of on-street metered parking systems, and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest (whether as a result of decreased revenues, increased expense or both), except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action) or such action is otherwise permitted under this Agreement; provided, however, that none of the following shall be an Adverse Action: (A) subject to Section 3.8, the development, redevelopment, construction, maintenance, modification or change in the operation of any existing or new parking facility or mode of parking or of transportation (including a road, street or highway) whether or not it results in the reduction of Metered Parking Revenue or in the number of vehicles using the Metered Parking System or (B) the imposition of a Federal Tax of general application or an increase in Federal Taxes of general application, including Federal Parking Taxes of general application imposed on customers or operators of parking facilities. For the avoidance of doubt, the Parties acknowledge and agree that an Adverse Action shall occur if any of the events specified in Section 7.4, Section 7.9(a)(ii) or Section 7.9(b)(ii) as Adverse Action s therein shall have occurred.
- (b) If an Adverse Action occurs, the Concessionaire shall have the right to (i) be paid by the City the Concession Compensation with respect thereto (such Concession Compensation, the "AA-Compensation") or (ii) terminate this Agreement and be paid by the City the Metered Parking System Concession Value, in either case by giving notice in the manner described in Section 14.1(c).
- (c) If an Adverse Action occurs, the Concessionaire shall give notice (the "AA-Preliminary Notice") to the City within thirty (30) Days following the date on which the Concessionaire first became aware of the Adverse Action stating an Adverse Action has occurred. Within one hundred eighty (180) Days following the date of delivery of the AA-Preliminary Notice, the Concessionaire shall give the City another notice (the "AA-Notice") setting forth (i) details of the material adverse effect of the said occurrence on the fair market value of the Concessionaire Interest, (ii) a statement as to which right in Section 14.1(b) the

Concessionaire elects to exercise, and (iii) if the Concessionaire elects to exercise the right to Concession Compensation under Section 14.1(b), the amount claimed as AA-Compensation and details of the calculation thereof. The City shall, after receipt of the AA-Notice, be entitled by notice delivered to Concessionaire no later than thirty (30) Days following the date of receipt of the AA-Notice, to require the Concessionaire to provide such further supporting particulars as the City may reasonably consider necessary. If the City wishes to dispute the occurrence of an Adverse Action or the amount of AA-Compensation, if any, claimed in the AA-Notice, the City shall give notice of dispute (the "AA-Dispute Notice") to the Concessionaire within thirty (30) Days following the date of receipt of the AA-Notice stating in reasonable detail the grounds for such dispute. If neither the AA-Notice nor the AA-Dispute Notice has been withdrawn within thirty (30) Days following the date of receipt of the AA-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

- (d) If the Concessionaire has elected to exercise its right to AA-Compensation, the City shall pay the amount of Concession Compensation claimed to the Concessionaire within sixty (60) Days following the date of receipt of the AA-Notice, or if a AA-Dispute Notice has been given, then not later than sixty (60) Days following the date of determination of the AA-Compensation. If the City can provide adequate documentation and information to the Concessionaire, such that it can prove to the Concessionaire's satisfaction that the City does not have adequate capital in order to provide immediate payment of the AA-Compensation then the Parties will formulate a payment plan, so long as the terms of the payment plan does not exceed one hundred twenty (120) Days from when the original payment was otherwise due under this Agreement.

#### **Section 14.2. Termination.**

- (a) If the Concessionaire has elected to exercise its right to terminate this Agreement in connection with an Adverse Action pursuant to Section 14.1 of this Agreement, subject to Section 14.2(c) and Section 14.4, shall terminate sixty (60) Days following the date of receipt of the AA-Notice by the City, and the City shall pay an amount equal to the aggregate of (i) the Metered Parking System Concession Value as of the date of such termination (which shall be determined as if no Adverse Action has occurred), plus (ii) without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination, plus (iii) the Concession Compensation calculated for the period between the date of the Adverse Action and the date of termination less (iv) any insurance or condemnation proceeds received by the Concessionaire in respect of all or any portion of the Metered Parking System as a result of such Adverse Action (collectively, the "Termination Damages"), to the Concessionaire on the Reversion Date or, if the Termination Damages are determined on a date subsequent to the Reversion Date, then not later than sixty (60) Days following the date of determination of the Termination Damages; provided, however, that any amounts received by the Concessionaire or any Collateral Assignee from any

insurance policies payable as a result of damage or destruction to the Metered Parking System that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the City to the Concessionaire, so long as the City has not received any such amounts pursuant to Section 13.3(b). If the City can provide adequate documentation and information to the Concessionaire, such that it can prove to the Concessionaire's satisfaction that the City does not have adequate capital in order to provide immediate payment of the AA-Compensation, the Parties will formulate a payment plan, so long as term of this payment plan does not exceed one hundred twenty (120) Days from when the original payment is due under this agreement.

- (b) Any dispute arising out of the determination of the Termination Damages shall be submitted to the dispute resolution procedure in Article 19.
- (c) This Agreement shall not terminate pursuant to Section 14.2(a) unless the Concessionaire has first obtained and delivered to the City the written consent of the Collateral Assignee to such termination.
- (d) Payment of the entire sum of Termination Damages or the AA-Compensation, as the case may be, by the City to the Concessionaire, shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the occurrence of the Adverse Action, as the case may be, and, upon such payment, the City shall be released and forever discharged by the Concessionaire from any and all liability in respect of such Adverse Action.

**Section 14.3. Right of City to Remedy.** If the City wishes to remedy the occurrence of an Adverse Action, the City shall give notice thereof to the Concessionaire within thirty (30) Days following the date of receipt of the AA-Notice. If the City gives such notice it must remedy the applicable Adverse Action within one hundred eighty (180) Days following the date of receipt of the AA-Notice or, if a AA-Dispute Notice has been given, within one hundred eighty (180) Days following the final award pursuant to Article 19 to the effect that an Adverse Action occurred. If the City elects to remedy the occurrence of an Adverse Action within the applicable period of time, the right of the Concessionaire shall be limited to a claim for AA-Compensation with respect to such Adverse Action.

**Section 14.4. Other Actions by Governmental Authorities.** In the event that any Governmental Authority (other than the City, Marion County or the State of Indiana (or any subdivision or agency of any of the foregoing)) proposes to take any action at any time during the Term (including or enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by the Concessionaire or other operators of on-street metered parking systems (and not by others) and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest (whether as a result of decreased revenues, increased expense or both), except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of an Adverse Action or such action by any such other Governmental Authority), then at the request of the Concessionaire the City shall use its reasonable efforts to oppose and challenge such action

by any such other Governmental Authority; provided, however, that all reasonable out-of-pocket costs and expenses incurred by the City in connection with such opposition or challenge shall be borne by the Concessionaire.

## **ARTICLE 15**

### **DELAY EVENTS AND CONCESSION COMPENSATION**

#### **Section 15.1. Delay Events.**

- (a) If the Concessionaire is affected by a Delay Event, it shall give notice as soon as practicable but in no event later than five (5) Business Days following the date on which it first became aware of such Delay Event and the resulting delay to the City (provided that in the case of such Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to such Delay Event and information in support thereof, if known at that time. The City shall, after receipt of any such notice, be entitled by notice to require the Concessionaire to provide such further supporting information and details as the City may reasonably consider necessary.
- (b) The Concessionaire shall notify the City within five (5) Business Days following the date on which it first became aware that a Delay Event has ceased.
- (c) Subject to the Concessionaire giving the notice required in Section 15.1(a), a Delay Event shall excuse the Concessionaire from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of Days as the City and the Concessionaire jointly determine, each acting reasonably. If the City and the Concessionaire cannot agree upon the period of extension, then either Party shall be entitled to refer the matter to the dispute resolution procedure in Article 19. This Section 15.1(c) shall not excuse the Concessionaire from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.
- (d) If a Delay Event occurs that has the effect of causing physical damage or destruction to a material part of the Metered Parking System or results in the Metered Parking System being substantially unavailable for the provision of Metered Parking Services or the collection of Metered Parking Revenue and such effect continues for a period in excess of one hundred (100) Days (contiguous or non-contiguous within a 360-day period) and has a material adverse effect on the fair market value of the Concessionaire Interest, or if insurance policies payable

(or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by the Concessionaire) or condemnation or other similar proceeds are insufficient to restore the Concessionaire to the same economic position as it would have been in the absence of such event, then the Concessionaire shall have the right to extend the Term for a period of time that would be sufficient so to compensate the Concessionaire and to restore it to the same economic position as it would have been in had such Delay Event not occurred (a "Delay Event Remedy").

- (e) If the Concessionaire elects to exercise the right to the Delay Event Remedy, the Concessionaire shall give notice ("Delay Event Notice") to the City within five (5) Business Days following the date on which the Concessionaire first became aware of its right to the Delay Event Remedy occurring setting forth (i) the details of the Delay Event and its effect on either causing physical damage or destruction to the Metered Parking System that results in the Metered Parking System being substantially unavailable for the provision of Metered Parking Services or suspending the collection of Metered Parking Fees at the Metered Parking System, (ii) the amount claimed as compensation to restore the Concessionaire to the same economic position as it would have been in had such Delay Event not occurred (including the details of the calculation thereof) and (iii) the details of the relationship between such compensation and the Delay Event Remedy that it proposes. The City shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the City may reasonably consider necessary. If the City wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the City shall give notice to dispute (the "Delay Event Dispute Notice") to the Concessionaire within thirty (30) Days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within thirty (30) Days following the date of receipt of the Delay Event Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

**Section 15.2. Relationship to Compensation Event.** Section 15.1 shall not prevent the Concessionaire from receiving Concession Compensation or any other compensation from the City provided for in this Agreement for any Delay Event that constitutes a Compensation Event pursuant to the terms of this Agreement.

**Section 15.3. Payment of Concession Compensation.**

- (a) Except as provided elsewhere in this Agreement, if a Compensation Event occurs, the Concessionaire shall give notice (the "CE-Preliminary Notice") to the City within thirty (30) Days following the date on which the Concessionaire first became aware of the Compensation Event stating that a Compensation Event has occurred. Within thirty (30) Days following the date of delivery of the CE-Preliminary Notice, the Concessionaire shall give the City another notice (the "CE-Notice") setting forth (i) details of the Compensation Event, including an



explanation of the reasons that the event constitutes a Compensation Event under the terms of this Agreement and (ii) the amount claimed as Concession Compensation and details of the calculation thereof in accordance with the calculation methodology set forth in the definition of "Concession Compensation"; provided, that the failure by the Concessionaire to timely deliver the CE-Preliminary Notice or the CE-Notice shall not limit its remedies hereunder or otherwise reduce the amount of the Concession Compensation, except to the extent such failure materially prejudices the City, and in any such case such remedies or amount shall only be limited or reduced to the extent of such prejudice.

- (b) All Concession Compensation due to the Concessionaire shall be due and payable by the City within thirty (30) Days of the CE-Notice.
- (c) If the City wishes to dispute the occurrence of a Compensation Event or the amount of Concession Compensation claimed in the CE-Notice issued by the Concessionaire in accordance with Section 15.3(a), then the City shall give notice of dispute (the "CE-Dispute Notice") to the Concessionaire within thirty (30) Days following the date of receipt of the CE-Notice stating the grounds for such dispute. If the CE-Dispute Notice has not been withdrawn within thirty (30) Days following the date of receipt of the CE-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure set forth in Article 19. Notwithstanding the foregoing, the City shall pay to the Concessionaire any undisputed portion of the Concession Compensation in accordance with the terms of this Agreement during the pendency of any dispute regarding a disputed portion of the Concession Compensation.

## **ARTICLE 16 DEFAULTS; LETTERS OF CREDIT**

### **Section 16.1. Default by the Concessionaire.**

- (a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a "Concessionaire Default" under this Agreement:
  - (i) if the Concessionaire fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure continues unremedied for a period of ninety (90) Days following notice thereof (giving particulars of the failure in reasonable detail) from the City to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the City, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the City, and (C) such failure is in fact cured within such period of time;

(ii) if this Agreement or all or any portion of the Concessionaire Interest is Transferred in contravention of Article 17 and such Transfer or action continues unremedied for a period of ten (10) Business Days following notice thereof from the City to the Concessionaire;

(iii) if the Concessionaire fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19, and such failure continues unremedied for a period of thirty (30) Days following notice thereof from the City to the Concessionaire, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the City, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the City, acting reasonably, and (C) such failure is in fact cured within such period of time;

(iv) if the Concessionaire (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Concessionaire files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Metered Parking System or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 16.1(a)(iv);

(v) if within ninety (90) Days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within ninety (90) Days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Metered Parking System or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) Days after the expiration of any such stay, such appointment has not been vacated;

(vi) if a levy under execution or attachment has been made against all or any part of the Metered Parking System or any interest therein as a result of any Encumbrance (other than a Permitted Concessionaire Encumbrance) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within sixty (60) Days after the Concessionaire becomes aware of such levy, unless such levy resulted from actions or omissions of the City or its Representatives; or

(vii) the Concessionaire repudiates in writing any of its material obligations under this Agreement.

- (b) *Remedies of the City Upon Concessionaire Default.* Upon the occurrence, and during the continuance, of a Concessionaire Default, the City may, by notice to the Concessionaire with a copy to the Collateral Assignee in accordance with the terms hereof, declare the Concessionaire to be in default and may, subject to the provisions of Articles 18 and 19, do any or all of the following as the City, in its discretion, shall determine:

(i) the City may terminate this Agreement by giving thirty (30) Days' prior notice to the Concessionaire upon the occurrence of (A) a Concessionaire Default that consists of a failure to comply with, perform or observe any Operating Standard if such Concessionaire Default creates a material danger to the safety of Metered Parking System Operations or a material impairment to the Metered Parking System or to the continuing use of the Metered Parking System or (B) any other Concessionaire Default; provided, however, that the Concessionaire shall be entitled to cure a Concessionaire Default pursuant to Section 16.1(a)(i) by providing the City with a written work plan within such thirty (30)-Day period outlining the actions by which the Concessionaire will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the Concessionaire failed to perform or observe, which work plan is reasonably Approved by the City, but any failure of the Concessionaire to comply in any material respect with such Approved work plan following thirty (30) Days' notice of such failure from the City to the Concessionaire shall be deemed to be a Concessionaire Default described in Section 16.1(a)(i) and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an Approved work plan shall not apply thereto; *provided further* that the City shall not exercise the remedy provided in this subsection (i) if the Concessionaire Default consists solely of a violation of any of the provisions of Section 11.2 through Section 11.6 unless such violation is systematic or persistent (but any violation of such Sections shall nonetheless subject the Concessionaire to such fines or penalties otherwise applicable to such violation as they be imposed by the appropriate Governmental Authority or to the imposition of a requirement on the Concessionaire to demonstrate to the City that the Concessionaire has or will implement all actions considered necessary by the City (which may include a remedial plan) to remedy such violation.

(ii) if the Concessionaire Default is by reason of the failure to pay any monies, the City may (without obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the City shall be payable by the Concessionaire to the City within three (3) Business Days after demand therefor;

(iii) the City may cure the Concessionaire Default (but this shall not obligate the City to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses reasonably incurred by the City in curing or attempting to cure the Concessionaire Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses, shall be payable by the Concessionaire to the City within three (3) Business Days after written demand therefor; provided, however, that (A) the City shall not incur any liability to the Concessionaire for any act or omission of the City or any other Person in the course of remedying or attempting to remedy any Concessionaire Default and (B) the City's cure of any

Concessionaire Default shall not affect the City's rights against the Concessionaire by reason of the Concessionaire Default;

(iv) the City may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;

(v) the City may seek to recover its Losses arising from such Concessionaire Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(vi) with respect to those Concessionaire Defaults that entitle the City to terminate this Agreement pursuant to Section 16.1(b)(i), the City may terminate the Concessionaire's right to use, operate, maintain and rehabilitate the Metered Parking System and the Concessionaire's right to collect and retain Metered Parking Revenue and the Concessionaire Parking Enforcement Revenue, and in such event, the City or the City's agents and servants may immediately or at any time thereafter take possession and control of the Metered Parking System, by any available action under law or proceeding at law or in equity, and with or without terminating this Agreement, and undertake any and all of the Metered Parking System Operations; provided, however, that no such action by the City shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Concessionaire; provided further that any re-possession of the Metered Parking System or termination of this Agreement made in accordance with this Agreement as against the Concessionaire shall be valid and effective against the Concessionaire even though made subject to the rights of a Collateral Assignee to cure any default of the Concessionaire and continue as in the place of the Concessionaire under this Agreement or a new concession agreement as provided herein; and

(vii) the City may exercise any of its other rights and remedies provided for hereunder or at law or equity.

#### **Section 16.2. Defaults by the City.**

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a "City Default" under this Agreement:

(i) if the City fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action) and such failure continues unremedied for a period of ninety (90) Days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the City or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the City has demonstrated to the satisfaction of the Concessionaire, that (A) it is proceeding with all due diligence to cure or cause to be cured such failure, and (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, and (C) such failure is in fact cured within such period of time; provided, however that with respect to any failure comply with or observe any obligation, covenant, agreement, term or condition in this Agreement relating to payments to the

Concessionaire and such failure shall constitute a City Default if it continues unremedied for a period of five (5) Days following notice thereof or such longer period as such payment is being disputed in good faith by the City;

(ii) if the City fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19 and such default continues unremedied for a period of thirty (30) Days following notice thereof from the Concessionaire to the City, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the City has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;

(iii) if a levy under execution or attachment has been made against all or any part of the Metered Parking System or the Concessionaire Interest as a result of any Encumbrance (other than a Permitted City Encumbrance) created, incurred, assumed or suffered to exist by the City or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 Days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or if all or a material part of the Metered Parking System shall be subject to a condemnation or similar taking by the City or any agency thereof;

(iv) if the City (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 9 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the City files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the City, or of all or any substantial part of its properties (in each case, to the extent applicable to a municipality), or (D) takes any action in furtherance of any action described in this Section 16.2(a)(iv); or if within ninety (90) Days after the commencement of any proceeding against the City seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within ninety (90) Days after the appointment, without the consent or acquiescence of the City, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the City or of all or any substantial part of its properties (in each case, to the extent applicable to a municipality), such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) Days after the expiration of any such stay, such appointment has not been vacated;

(v) the City repudiates in writing any of its material obligations under this Agreement; and

(vi) (A) a court of competent jurisdiction enters a final and unappealable judgment order against the City in any action, suit or proceeding brought against the City, which action, suit or proceeding was not brought by or supported in any way by the Concessionaire, any Operator, any Representative, any Collateral Assignee or any other Person acting on behalf of any of the foregoing or any other Person having an pecuniary interest in this Agreement, and (B) as a result of such final and unappealable judgment order (i) it becomes unlawful for the City to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement or (ii) any material obligation, covenant, agreement, term or condition of the City under this Agreement becomes unenforceable against the City.

(b) *Remedies of Concessionaire Upon City Default.* Upon the occurrence, and during the continuance, of a City Default, the Concessionaire may by notice to the City declare the City to be in default and may, subject to the provisions of Article 19, do any or all of the following as the Concessionaire, in its discretion, shall determine:

(i) the Concessionaire may terminate this Agreement by giving thirty (30) Days' prior notice to the City; provided, however, that the City shall be entitled to cure a City Default pursuant to Section 16.2(a)(i) by (i) agreeing within such thirty (30)-Day period to pay any Losses sustained as a result of such City Default or (ii) providing the Concessionaire with a written work plan within such thirty (30)-Day period outlining the actions by which the City will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the City failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the City to comply in any material respect with such approved work plan following thirty (30) Days' notice of such failure from the Concessionaire to the City shall be deemed to be a City Default described in Section 16.2(a)(i) and the entitlement of the City to cure such City Default by the delivery of an approved work plan shall not apply thereto; and upon such termination the City shall be obligated to pay to the Concessionaire the Metered Parking System Concession Value plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination;

(ii) the Concessionaire may exercise any of its rights or remedies at law or in equity;

(iii) the Concessionaire may seek to recover its Losses and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(iv) the Concessionaire may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a City Default; and

(v) the Concessionaire may seek to recover its Losses arising from such City Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt.

### **Section 16.3. Letters of Credit.**

- (a) The Concessionaire shall deliver no later than the first Day of the Concession Year that is five (5) years prior to the final Concession Year of the Term, a Letter of Credit in the amount then to be calculated equal to the amount that the City reasonably determines is appropriate to cover all costs of capital improvements for the remainder of the Term as set forth in the Concessionaire's capital improvement requirements included in the Operating Standards.
- (b) Subject to Section 16.3(c), such Letter of Credit shall be replaced on every anniversary of such Concession Year until the date that is two (2) years after (i) the expiration of the Term and (ii) such time as there are no unresolved disputes with respect to the Concessionaire complying with, performing or observing any obligation, covenant, agreement, term or condition in this Agreement with a Replacement Letter of Credit in the amount of the undrawn balance of such Letter of Credit plus the amount of interest that would have been earned on such balance if invested for the next twelve (12)-month period at the Bank Rate. Subject to Approval, the required amount of any Letter of Credit with respect to a Concession Year (but only with respect to such Concession Year) may be reduced from time to time (at intervals that may be shorter than one (1) year) by the amount that the City reasonably determines is appropriate (taking into account progress by the Concessionaire made toward the completion of capital improvements and changes in costs of remaining capital improvements) such that the amount of the Letter of Credit after such reduction remains sufficient to cover all costs of capital improvements for the remainder of the Term as required by the Operating Standards in light of the condition of the Metered Parking System (including the City's assessment of the present and future condition of the Metered Parking System, and all costs and expenses of capital improvements to be performed in connection therewith, during the remaining years of the Term) and the Concessionaire's compliance with this Agreement in connection therewith. Upon the occurrence of a Concessionaire Default solely relating to the Concessionaire's failure to comply with the Concessionaire's capital improvement program required pursuant to the Operating Standards (or if there is a dispute as to the occurrence of any such Concessionaire Default, upon the final decision of the arbitral panel pursuant to Article 19 that any such Concessionaire Default has occurred), the City shall have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the City may recover will be reduced by the amount so drawn, and without the City's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated), with three (3) Business Days' prior notice to the Concessionaire, to draw against such Letter of Credit or any replacement thereof, upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount necessary to perform the capital improvements that the Concessionaire failed to perform in accordance with the Concessionaire's capital improvement program required pursuant to the Operating Standards.

- (c) The Concessionaire shall replace each Letter of Credit with a replacement Letter of Credit (the "Replacement Letter of Credit") at least thirty (30) Days prior to the expiry date of a Letter of Credit which is expiring. If the Concessionaire does not deliver to the City a Replacement Letter of Credit within such time period, the City shall have the right (in addition to all other rights and remedies provided in this Agreement and without the City's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated) to immediately draw the full amount of the Letter of Credit upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such Letter of Credit in the amount of such sight draft. After the Concessionaire delivers to the City a Replacement Letter of Credit complying with the provisions of this Agreement, the City shall deliver in accordance with the Concessionaire's reasonable instructions the Letter of Credit being replaced (except to the extent that at such time no sight draft under such Letter of Credit is outstanding and unpaid). Any Replacement Letter of Credit shall be upon the same terms and conditions as the Letter of Credit replaced and satisfy the requirements for a Letter of Credit, but in any event (i) the amount of each Replacement Letter of Credit, except as provided in Section 16.3(a), shall equal or exceed the amount of the Letter of Credit being replaced at the time of replacement and (ii) the date of the Replacement Letter of Credit shall be its date of issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be not earlier than one year later than the expiry date of the Letter of Credit being replaced.
- (d) If this Agreement is terminated by the City prior to the expiration of the Term as a result of a Concessionaire Default, the City shall have the right (in addition to all other rights and remedies provided in this Agreement and without the City's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform), with three Business Days' prior notice to the Concessionaire, to draw against any Letter of Credit, upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount necessary to perform the capital improvements that the Concessionaire failed to perform in accordance with the Concessionaire's capital improvement program required pursuant to the Operating Standards.
- (e) The City will accept the Letters of Credit to be delivered pursuant to this Section 16.3 (and pursuant to Section 2.3) as security for the Concessionaire's obligations under this Agreement, in place of a cash deposit in the same amount, with the understanding that the Letters of Credit are to be the functional equivalent of a cash deposit. The Concessionaire's sole remedy in connection with the improper presentment or payment of sight drafts drawn under the Letter of Credit shall be the right to obtain from the City a refund of the amount of any sight draft the proceeds of which were drawn inappropriately or misapplied and the reasonable costs incurred by the Concessionaire as a result of such inappropriate draw or misapplication; provided, however, that at the time of such refund, the Concessionaire increases the amount of the Letter of Credit to the amount (if any)



then required under the applicable provisions of this Agreement. The Concessionaire acknowledges that the presentment of sight drafts drawn under the Letter of Credit could not under any circumstances cause the Concessionaire injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. The Concessionaire shall not request or instruct the issuer of the Letter of Credit to refrain from paying any sight draft drawn under a Letter of Credit.

- (f) If the City desires to assign its rights and obligations in accordance with Section 17.2 of this Agreement, the Concessionaire shall cooperate so that concurrently with the effectiveness of such assignment, either Replacement Letters of Credit as described in Section 16.3(c) for, or appropriate amendments to, the Letters of Credit then held by the City, in either case identifying as beneficiary the appropriate party after the assignment becomes effective, shall be delivered to the City, at no cost to the Concessionaire.
- (g) The Concessionaire shall obtain and furnish all Letters of Credit and Replacement Letters of Credit at its sole cost and expense and shall pay all charges imposed in connection with the City's presentation of sight drafts and drawing against the Letters of Credit or Replacement Letters of Credit.
- (h) In lieu of any Letter of Credit to be provided by the Concessionaire pursuant to the terms of this Section 16.3, the Concessionaire shall, at the Concessionaire's sole discretion, have the option to provide a surety bond or other similar form of security or to deposit with a Depositary for the benefit of the City, as collateral security, cash or Eligible Investments in an amount equal to the amount of such Letter of Credit at the time of such deposit; *provided, however*, that the terms and documentation related thereto are acceptable to the City. Such Depositary shall invest and reinvest such amounts in Eligible Investments at the direction of the City, provided that earnings thereon shall be paid to the Concessionaire not less frequently than quarterly. If, at any time during the Term, the City would have the right to draw any amount on a Letter of Credit for which the Concessionaire has substituted cash or Eligible Investments pursuant to this Section 16.3(h), the Depositary shall pay such amount to the City from such cash deposit or Eligible Investments in accordance with the terms of this Section 16.3 and all rights and remedies of the City and the Concessionaire with respect to such cash deposits or Eligible Investments, if any, shall be the same as those provided in this Section 16.3 with respect to any Letter of Credit; provided, however, that the certification that would have been provided by the City with the sight draft had cash or Eligible Investments not been so substituted shall be made to the Depositary and delivered to the Depositary together with the City's written demand for payment.
- (i) If Letters of Credit shall not in the future be available at commercially reasonable terms and rates or shall not be a commercially reasonable form of security in similar transactions, the Concessionaire shall furnish the City with comparable security instruments or Eligible Investments that then are commonly used in similar transactions and which are Approved; and if no such comparable security

instruments shall be available, the Concessionaire shall deposit with the City cash as security.

**Section 16.4. Consequences of Termination or Reversion.** Upon the termination or expiration of this Agreement but expressly subject to the receipt by the Concessionaire of the Termination Damages or compensation payable by the City pursuant to Section 16.2(b)(i) if applicable, notwithstanding any claims the Parties may have against each other and subject to Section 16.1(b)(v), Section 16.2(b)(iii) and Article 18, the following provisions shall apply:

- (a) the Concessionaire shall, without action whatsoever being necessary on the part of the City, surrender, transfer and deliver to the City the Metered Parking System (including all improvements to the Metered Parking System), the Metered Parking System Assets and all tangible and intangible personal property of the Concessionaire (including inventories) that is included in the Metered Parking System and used in connection with the Metered Parking System Operations (subject, however, as to any intellectual property included in the Metered Parking System, to any restrictions or prohibitions to disclosure, transfer or sharing thereof and any other rights of third parties with respect thereto), in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the then applicable Operating Standards, free and clear of all Encumbrances other than (w) Permitted Concessionaire Encumbrances set forth in clause (iv), clause (vii) and clause (viii) as it pertains to clauses (iv) and (vii) of the definition of that term, (x) Permitted City Encumbrances, (y) those created by or suffered to exist or consented to by the City or any Person claiming through it, and (z) with respect to any property added to the Metered Parking System after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Metered Parking System;
- (b) the Concessionaire hereby waives any notice now or hereafter required by Law with respect to transfer of the Metered Parking System on the Reversion Date;
- (c) the City shall, as of the Reversion Date, assume full responsibility for the Metered Parking System Operations, and as of such date, the Concessionaire shall have no liability or responsibility for Metered Parking System Operations occurring after such date;
- (d) the Concessionaire shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the Reversion Date, and the City shall be liable for all costs, expenses and amounts incurred in connection with the Metered Parking System Operations on and after the Reversion Date;
- (e) the City shall have the option by providing notice to the Concessionaire of requiring that the Concessionaire assign, without warranty or recourse to the Concessionaire, to the fullest extent permitted by Authorizations and applicable Law, all of its right, title and interest in, to and under (in each of the following cases, to the extent assignable) all or any of the Operating Agreements then in

effect and all Authorizations to the City or its nominee for the remainder of their respective terms; provided, however, that if the City exercises such option, the right, title and interest of the Concessionaire in, to and under such Operating Agreements and Authorizations shall be assigned to the City or its nominee as of the Reversion Date and the Concessionaire shall surrender the Metered Parking System to the City and shall cause all Persons claiming under or through the Concessionaire to do likewise, and the City shall assume in writing, pursuant to an assumption agreement satisfactory to the Concessionaire, the Concessionaire's obligations under the Operating Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; provided further that if the City does not exercise such option, the Concessionaire shall, unless the City has granted to a Collateral Assignee or its nominee a new concession agreement containing the same provisions as are contained in this Agreement, take such steps as are necessary to terminate the Operating Agreements to the extent permitted thereunder and in accordance with the terms thereof;

- (f) the Concessionaire, at its sole cost and expense, shall promptly deliver to the City copies of all records and other documents relating to the Metered Parking Revenue and Parking Enforcement Revenue that are in the possession of the Concessionaire or its Representatives and all other then existing records and information relating to the Metered Parking System as the City, acting reasonably, may request;
- (g) the Concessionaire shall execute and deliver to the City a transfer of title documents and other instruments reasonably required by the City to evidence such termination;
- (h) the Concessionaire shall assist the City in such manner as the City may require to ensure the orderly transition of control, operation, management, maintenance and rehabilitation of the Metered Parking System, and shall, if appropriate and if requested by the City, take all steps as may be necessary to enforce the provisions of the Operating Agreements pertaining to the surrender of the Metered Parking System;
- (i) the City and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to the City, Metered Parking Fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of one hundred eighty (180) Days following the Reversion Date; provided, however, that the City and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the City or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended; and

- (j) if this Agreement is terminated as a result of an Adverse Action, the payment by the City to the Concessionaire of the amounts required under Article 14 or Article 19 shall constitute full and final settlement of any and all Claims the Concessionaire may have against the City for and in respect of the termination of this Agreement and upon such payment, the Concessionaire shall execute and deliver all such releases and discharges as the City may reasonably require to give effect to the foregoing.

This Section 16.4 shall survive the expiration or any earlier termination of this Agreement.

**Section 16.5. Termination Other Than Pursuant to Agreement.** If this Agreement is terminated by the City other than pursuant to Section 16.1 or is canceled, rescinded or voided during the Term for any reason over the objection and without action by the Concessionaire, any Collateral Assignee and their respective Affiliates, the City shall pay to the Concessionaire the Metered Parking System Concession Value as of the date of such termination, cancellation, rescinding or voiding, plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination, cancellation, rescinding or voiding. The City hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience.

## **ARTICLE 17**

### **RESTRICTIONS ON TRANSFERS**

#### **Section 17.1. Transfers by the Concessionaire.**

- (a) The Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire Interest to or in favor of a Transferee, unless (i) the City has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee (unless it is a Collateral Assignee permitted under Article 18) and (ii) the proposed Transferee (unless it is a Collateral Assignee permitted under Article 18) enters into an agreement with the City in form and substance satisfactory to the City, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void *ab initio* and of no force and effect; provided, however that, while any Collateral Assignment Debt is outstanding, the City shall not agree to any Transfer of any or all of the Concessionaire Interest to or in favor of any Person without the previous written confirmation from the Collateral Assignee that such Transfer is permitted under all outstanding Collateral Assignment Debt.
- (b) Approval of a proposed Transferee may be withheld if the City reasonably determines that (i) such proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with the City is prohibited by Law, (iii) such proposed Transfer would result in a violation of

Law, (iv) such proposed Transfer would result in a Tax liability to the City (unless the City shall have received indemnification, as determined in the City's discretion, with respect thereto) or (v) such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire under this Agreement, which determination shall be based upon and take into account the following factors: (a) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (b) the experience of the proposed Transferee or the Operator to be engaged by the proposed Transferee in operating metered parking systems and performing other relevant projects; (c) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and (d) the Operator engaged by the proposed Transferee, including the ability of the Operator to meet the operating standards.

- (c) No Transfer of all or any of the Concessionaire Interest (except a Transfer to a Collateral Assignee or its nominee upon its exercise of remedies under its Collateral Assignment and a subsequent transfer to the transferee of the Collateral Assignee that has been Approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.
- (d) A Change in Control of the Concessionaire shall be deemed to be a Transfer of the Concessionaire Interest for purposes of the foregoing provisions.
- (e) Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or limited partnership), provided that such change in organizational form or status does not result in a Change of Control of the Concessionaire.
- (f) Neither (i) a change of ownership that is attributable to a concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the City under this Agreement, nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire's economic interest under this Agreement to another entity shall be deemed to be a Transfer of the Concessionaire Interest for purposes of Section 17.1(a).

**Section 17.2. Assignment by the City.** The City shall have the right to Transfer any or all of the City's interest in the Metered Parking System and this Agreement, provided that it shall be jointly and severally liable with the Transferee for the performance and observance of the

obligations and covenants of the City under this Agreement, the Transferee must not be a direct competitor with Concessionaire and its Affiliates and any agreement entered into by the City under this Agreement (including agreeing directly with any Collateral Assignee to be bound by the agreement entered into in accordance with Section 18.3) and that any such Transfer by the City shall not materially limit or reduce any of the Concessionaire's other rights, benefits, remedies or privileges under this Agreement.

## **ARTICLE 18**

### **LENDER'S RIGHTS AND REMEDIES**

**Section 18.1. Collateral Assignments.** The Concessionaire shall have the right, at its sole cost and expense, to execute and deliver one or more (subject to Section 18.7) Collateral Assignments, if at the time any such Collateral Assignment is executed and delivered to the Collateral Assignee, no Concessionaire Default exists unless any such Concessionaire Default will be cured pursuant to Section 18.3 in connection with entering into such Collateral Assignment, and upon and subject to the following terms and conditions:

- (a) a Collateral Assignment may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Concessionaire (including any debt guaranteed by the Concessionaire in accordance with Section 3.6), but may cover shares or equity interests in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire;
- (b) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Collateral Assignee in this Agreement; provided, however, that lenders to the Concessionaire (and lenders to the Collateral Assignee as successor in interest to the Concessionaire under this Agreement) may be Persons other than Institutional Lenders so long as any Collateral Assignment securing the loans made by such Persons is held by an Institutional Lender acting as collateral agent or trustee;
- (c) no Collateral Assignment or other instrument purporting to pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concessionaire Interest shall extend to or affect the fee simple interest in the City's interest hereunder or its reversionary interest and estate in and to the Metered Parking System or any part thereof;
- (d) the City shall have no liability whatsoever for payment of the principal sum secured by any Collateral Assignment, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the City of express obligations set forth herein, the Collateral Assignee shall not be entitled to seek any damages or other amounts against the City for any or all of the same;
- (e) the City shall have no obligation to any Collateral Assignee in the enforcement of the City's rights and remedies herein and by Law provided, except as expressly set forth in this Agreement and unless such Collateral Assignee has provided the City

with notice of its Collateral Assignment in accordance with the Collateral Assignee Notice Requirements;

- (f) each Collateral Assignment shall provide that if the Concessionaire is in default under the Collateral Assignment and the Collateral Assignee gives notice of such default to the Concessionaire, then the Collateral Assignee shall give notice of such default to the City;
- (g) subject to the terms of this Agreement, all rights acquired by a Collateral Assignee under any Collateral Assignment shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the City hereunder;
- (h) while any Collateral Assignment is outstanding, the City shall not agree to any amendment or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Collateral Assignee or agree to a voluntary surrender or termination of this Agreement by the Concessionaire without the consent of the Collateral Assignee;
- (i) notwithstanding any enforcement of the security of any Collateral Assignment, the Concessionaire shall remain liable to the City for the payment of all sums owing to the City under this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement; and
- (j) a Collateral Assignee shall not, by virtue of its Collateral Assignment, acquire any greater rights or interest in the Metered Parking System than the Concessionaire has at any applicable time under this Agreement, other than such rights or interest as may be granted or acquired in accordance with Section 18.2, 18.3, 18.4 or 18.5; and each Collateral Assignee, the City and the Concessionaire shall enter into a consent agreement in a form acceptable to all parties; provided that such consent agreement shall be in a customary form and shall include the rights and protections provided to the Collateral Assignees in this Agreement.

**Section 18.2. Notices and Payments to Collateral Assignees.** Whenever a Collateral Assignment exists as to which the City has been provided notice in accordance with the Collateral Assignee Notice Requirements, the City shall, simultaneously with providing the Concessionaire any required notice under this Agreement, provide a copy of such notice to such Collateral Assignee, and no such notice to the Concessionaire shall be effective against the Collateral Assignee until a copy thereof is duly provided to such Collateral Assignee at its address specified in its notice given to the City in accordance with the Collateral Assignee Notice Requirements (or any subsequent change of address notice given to the City pursuant to the requirements of Section 20.1). With respect to a Collateral Assignment regarding which the City has been provided notice in accordance with the Collateral Assignee Notice Requirements, unless the Collateral Assignee has otherwise advised the City in writing, all payments to the Concessionaire to be made by the City under this Agreement shall be made to the institution acting as the collateral agent or depository under the financing secured by such Collateral Assignment.

**Section 18.3. Collateral Assignee's Right to Cure.** The Collateral Assignee shall have a period of sixty (60) Days with respect to any Concessionaire Default beyond any cure period expressly provided to the Concessionaire herein, in which to cure or cause to be cured any such Concessionaire Default; provided, however, that such sixty (60)-Day period shall be extended if the Concessionaire Default may be cured but cannot reasonably be cured within such period of sixty (60) Days, and the Collateral Assignee begins to cure such default within such sixty (60)-Day period (or, if possession is necessary in order to effect such cure, the Collateral Assignee commences appropriate lawful action (pursuant to judicial process or otherwise) to take possession or transfer possession (subject to the provisions of Article 17) of the Metered Parking System within sixty (60) Days) and thereafter proceeds with all due diligence to cure such Concessionaire Default (including by proceeding with all due diligence to take possession or effect such transfer) within a reasonable period of time acceptable to the City, acting reasonably; provided further that if a Collateral Assignee's right to cure a Concessionaire Default has not expired, and the Collateral Assignee is acting to cure such Concessionaire Default in accordance with this Section 18.3 then the City shall not exercise its right to terminate this Agreement by reason of such Concessionaire Default. In furtherance of the foregoing, the City shall permit the Collateral Assignee and its Representatives the same access to the Metered Parking System as is permitted to the Concessionaire hereunder. The City shall accept any such performance by a Collateral Assignee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by a Collateral Assignee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Collateral Assignee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Collateral Assignee.

**Section 18.4. Rights of the Collateral Assignee.**

- (a) Subject to the provisions of this Agreement including a Collateral Assignee may (i) enforce its Collateral Assignment in any lawful way, (ii) acquire the Concessionaire Interest in any lawful way or (iii) take control of in any lawful way and manage the Metered Parking System. Upon exercise of any contractual or statutory power of sale or possession under such Collateral Assignment and subject to the provisions of Article 17 (applied to the Collateral Assignee as if it were the Concessionaire), a Collateral Assignee may Transfer the Concessionaire Interest; provided, however, that no Transfer by a Collateral Assignee shall be effective unless the Transfer is made in accordance with Section 17.1. Any Person to whom the Collateral Assignee Transfers the Concessionaire Interest (including such Collateral Assignee) shall take the Concessionaire Interest subject to any of the Concessionaire's obligations under this Agreement.
- (b) Except as provided in Section 18.3, unless and until a Collateral Assignee (i) forecloses upon or has otherwise taken ownership of the Concessionaire Interest or (ii) has taken possession or control of the Concessionaire Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concessionaire Interest by reference to the Collateral Assignment, the Collateral Assignee shall not be liable for any of the Concessionaire's obligations under this Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Agreement,



except by way of security. If the Collateral Assignee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, the Concessionaire Interest, it shall be bound by all liabilities and obligations of the Concessionaire under this Agreement (including the obligation to engage an Operator). Once the Collateral Assignee goes out of ownership, possession or control of the Concessionaire Interest or Transfers the Concessionaire Interest to another Person in accordance with the provisions of this Agreement, the Collateral Assignee shall cease to be liable for any of the Concessionaire's obligations under this Agreement accruing thereafter and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except, if the Collateral Assignment remains outstanding, by way of security.

#### **Section 18.5. City's Termination of this Agreement; New Agreement.**

- (a) Without prejudice to the rights of a Collateral Assignee under Section 18.3, if this Agreement is terminated prior to the expiration of the Term due to a Concessionaire Default (in which case the City shall notify the Collateral Assignee of such termination) or if this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the City agrees to enter into a new concession agreement of the Metered Parking System with the Collateral Assignee (or its designee or nominee, provided that such designee or nominee either is controlled by the Collateral Assignee or is Approved by the City as Transferee under Section 17.1) for the remainder of the original stated Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New Agreement"), effective as of the date of such termination, but only on and subject to the satisfaction of all of the following requirements and conditions: (i) such Collateral Assignee commits in writing to the City, in a notice delivered to the City, within thirty (30) Days after the City delivers the termination notice to the Collateral Assignee (or, if later, upon the termination of any cure period granted to the Collateral Assignee pursuant to Section 18.3) or within thirty (30) Days after the effective date of such rejection or disaffirmance, as the case may be, that the Collateral Assignee (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Collateral Assignee (or its designee or nominee); (ii) provided the City notifies the Collateral Assignee in advance, the Collateral Assignee (or its designee or nominee) pays or causes to be paid to the City, at the time of the execution and delivery of the New Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination; (iii) provided the City furnishes a statement or invoice for such costs the Collateral Assignee pays or causes to be paid to the City all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the City in connection with such defaults and termination, the recovery of possession from the Concessionaire, and in connection with the preparation, execution and delivery of the New Agreement

and related agreements and documents specified in such statement or invoice; and (iv) such Collateral Assignee (or its designee or nominee), at the time of such written request, cures all defaults under this Agreement (curable by the payment of money) existing immediately prior to the termination of this Agreement, or, if such defaults cannot be cured by the payment of money, such Collateral Assignee (or its designee or nominee) commits to the City in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other defaults and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults (and such cure shall be a covenant in the New Agreement).

- (b) Nothing contained in this Section 18.5 shall be deemed to limit or affect the City's interest in and to such Metered Parking System upon the expiration of the Term of the New Agreement. The provisions of this Section 18.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.5 were a separate and independent contract made by the City, the Concessionaire and the Collateral Assignee and, if the Collateral Assignee satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, the Collateral Assignee may operate the concession created by this Agreement without hindrance by the City, but only on and subject to the terms and provisions of this Agreement.

**Section 18.6. Right to Arbitration.** In each case specified in this Agreement in which resort to arbitration is authorized, the Collateral Assignee shall have the right and privilege if an event of default under the Collateral Assignment then exists and notice has been given to the City as contemplated by Section 18.1(f), in the Concessionaire's name, place and stead, to obtain and participate in such arbitration upon notice to the City in accordance with Section 20.1, provided that the Collateral Assignee agrees to be bound by the decision of the arbitration panel.

**Section 18.7. Recognition by the City of Collateral Assignee.** If there is more than one Collateral Assignee, only that Collateral Assignee, to the exclusion of all other Collateral Assignees, whose notice was earliest received by the City pursuant to the Collateral Assignee Notice Requirements, shall have the rights as a Collateral Assignee under this Article 18, unless such Collateral Assignee has designated in writing another Collateral Assignee to exercise such rights. The City, the Concessionaire and the Collateral Assignee shall enter into a direct agreement on terms and conditions satisfactory to the Collateral Assignee.

**Section 18.8. City's Right to Purchase Indebtedness Secured by Collateral Assignment.**

- (a) If any default by the Concessionaire has occurred under a Collateral Assignment, or any act, condition or event has occurred which would permit a Collateral Assignee to declare all or part of the indebtedness secured by a Collateral Assignment to be immediately due and payable, then the City shall have thirty (30) Days after the date on which such Collateral Assignee shall serve notice

upon the City in writing ("Collateral Assignee's Notice") that such Collateral Assignee intends to commence proceedings to exercise its rights or remedies under the Collateral Assignment (stating the calculation of the purchase price pursuant Section 18.8(c)), during which thirty (30)-Day period the City shall have the right and option (the "City's Option") to purchase from all Collateral Assignees the indebtedness secured by all Collateral Assignments, upon the terms and subject to the conditions contained in this Section 18.8.

- (b) The City's Option shall be exercised by notice served upon the Concessionaire and all Collateral Assignees within such thirty (30)-Day period. Time shall be of the essence as to the exercise of the City's Option. If the City's Option is duly and timely exercised, the City shall purchase on the date which is sixty (60) Days after the date on which a Collateral Assignee's Notice is served upon the City. The closing shall take place at a mutually convenient time and place.
- (c) The purchase price payable by the City shall be equal to the aggregate amounts secured by such Collateral Assignments (including principal, interest, fees, premiums, breakage and other costs, expenses (including attorneys' fees) and any other amounts secured thereby) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the City to each respective Collateral Assignee, to be applied by the Collateral Assignee to the indebtedness secured by the Collateral Assignment owed to such Collateral Assignee, subject to the priorities of the security interests created by such Collateral Assignments.
- (d) At the closing and upon payment in full of the purchase price each Collateral Assignee shall assign its Collateral Assignment to the City, together with any security interest held by it in the Concessionaire Interest, without recourse, representations, covenants or warranties of any kind, provided that such Collateral Assignments and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the City to all Collateral Assignees (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 18.8(d). The City shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment.
- (e) Any Collateral Assignment shall contain an agreement of the Collateral Assignee to be bound by the provisions of this Section 18.8.
- (f) The City shall have the right to receive all notices of default under any Collateral Assignment, but the City shall not have the right to cure any default under any Collateral Assignment, except to the extent provided in this Section 18.8.

## **ARTICLE 19**

### **DISPUTE RESOLUTION**

**Section 19.1. Scope.** Any dispute arising out of, relating to, or in connection with this Agreement, including any question as to whether such dispute is subject to arbitration, shall be resolved as set forth in this Article 19.

**Section 19.2. Informal Dispute Resolution Procedures.** The Parties shall attempt in good faith to resolve such dispute within fifteen (15) Business Days following receipt by one Party of notice of such dispute from the other Party. If the Parties are unable to resolve the dispute within such period of fifteen (15) Business Days, and upon notice by either Party to the other, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary. Statements made by representatives of the Parties during the dispute resolution procedures set forth in this Section 19.2 and in Section 19.3 and documents specifically prepared for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any arbitration or other litigation proceeding between the Parties without the mutual consent of the Parties.

**Section 19.3. Mediation.** Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Senior Persons, after following the procedures set forth in Section 19.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) fifteen (15) Business Days after the notice referring the dispute to the Designated Senior Persons, pursuant to Section 19.2. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation. The mediator for such dispute shall be an attorney in good standing with the Indiana Supreme Court who is registered with the Indiana Supreme Court Commission for Continuing Legal Education as a civil mediator (the "Mediator"). The Parties shall attempt, in good faith to agree on a Mediator. If the Parties cannot so agree within fifteen (15) Days after it is determined that the Designated Senior Persons cannot resolve the dispute, the Parties jointly shall petition the Judge of the Marion County Circuit Court to order a list of five qualified mediators from which the Parties shall strike. The claiming Party shall strike first. After striking is complete, the remaining individual shall serve as Mediator. In the event the Mediator selected by striking is unable or unwilling to serve or is otherwise disqualified, the previously stricken mediators shall be designated in inverse order until a mediator is selected. Mediation shall be regarded as settlement negotiations as provided in Rule 2.11 of the Indiana Rules of Alternative Dispute Resolution.

**Section 19.4. Arbitration.** Unless the Parties otherwise agree, if mediation as set forth in Section 19.3 does not resolve the dispute within thirty (30) Business Days from the date the Mediator is selected or such longer period as the Parties may mutually agree, the dispute shall be exclusively and finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") in effect at the time of execution of this Agreement as modified or supplemented by this Article 19. Either Party may initiate the arbitration, as provided in the AAA Rules, no later than forty-five (45) Days after the date the Mediator is selected. If the Parties mutually agree to extend the period for mediation, the forty-five (45)-Day period for the initiation of arbitration shall be extended for an equal

period of time. The place of arbitration shall be Indianapolis, Indiana unless the Parties agree otherwise.

The arbitration panel shall determine the rights and obligations of the Parties in accordance with the substantive laws of the State of Indiana without regard to conflicts of laws principles thereof. Except as agreed by the Parties, the arbitration panel shall have no power to alter or modify any terms or provisions of this Agreement, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Agreement. The arbitration panel shall have no power or jurisdiction to award punitive damages.

The arbitration panel shall be composed of three (3) arbitrators, one (1) to be selected by the City, one (1) to be selected by the Concessionaire and the third (3rd) (who shall act as chairman of the panel) to be selected by the two previously-selected arbitrators. Each arbitrator shall be a lawyer admitted to practice law for a minimum of fifteen (15) years who is in good standing in the State of his or her admission. If the two (2) previously-selected arbitrators cannot agree on the selection of the third (3rd) arbitrator, the Chief Judge of the United States Court of Appeals for the judicial circuit in which Indianapolis is located shall select the third (3rd) arbitrator. A Party may contact potential arbitrators in the course of selecting its Party appointed arbitrator for the purpose of determining qualification, potential conflicts, availability, hourly rates and related matters. However, once the arbitration panel has been composed, the arbitrators shall act as neutrals and not as party arbitrators, and no Party shall engage in any ex parte communication with any member of the arbitration panel. The arbitration proceeding shall be recorded by a court reporter mutually satisfactory to the Parties.

The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration. The Parties may use all methods of discovery available under the Federal Rules of Civil Procedure subject to time limits set by the arbitration panel. Each Party shall be entitled to take five (5) depositions in addition to expert depositions and such additional depositions as may be permitted by the arbitration panel. Prior to the deposition of any expert witness, the party proposing to call such a witness shall provide a full and complete report by the expert, together with the expert's calculations and other data by which the expert reached any opinions concerning the subject matter of the arbitration. The report shall be provided no more than ten (10) Days prior to the date set forth in the expert witness's deposition.

Each Party shall bear its own attorney fees, expenses, and costs. The award shall be a reasoned award within the meaning of Rule 42 of the AAA Rules and shall set forth findings of fact and conclusions of law. The award shall include interest at the Bank Rate from the date of any breach or violation of this Agreement as determined in the arbitration award until paid in full. The award shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties.

Judgment on the award may be entered by any court with jurisdiction.

The Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall govern any arbitration conducted pursuant to this Section 19.4. In addition to the grounds for modifying or correcting the award set forth in § 11 of the Act, the Court may modify or correct the award to the extent the

arbitrators' erred in their findings as to Indiana law and such error materially affected the arbitration award.

**Section 19.5. Provisional Remedies.** No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Metered Parking Revenue and Parking Enforcement Revenue.

**Section 19.6. Tolling.** If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 19, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

**Section 19.7. Technical Arbitration.**

- (a) *Informal Dispute Resolution by Consultant.* The Parties may agree to submit any technical dispute under this Agreement, including any technical dispute with respect to Article 7 that is submitted pursuant to Section 7.11 to the Consultant, which submission may be made without submitting the technical dispute to technical arbitration pursuant to Section 19.7(b) or to the dispute resolution process described in Section 19.2, Section 19.3 and Section 19.4 and once such technical dispute has been submitted to the Consultant then the time limits set out in Section 19.2, Section 19.3 and Section 19.4 shall no longer apply. The Consultant shall determine any unresolved disputed items within three (3) Business Days of the submission of such dispute to the Consultant, unless the Consultant has good cause to extend such date for determination. The submission shall be in the form of written statements of position by one or both of the Parties, which statements shall be provided to both the other Party and the Consultant, with each Party having an opportunity to respond to such written statements of the other Party and any requests for statements or information by the Consultant, including in-person meetings. The Parties shall each bear their own costs with respect to the submission of such dispute to the Consultant and shall bear equally the cost of the Consultant with respect to such dispute. The Consultant's award shall be in writing and state the reasons upon which it is based. The decision of the Consultant shall be final and binding on the Parties, unless either Party expressly reserves the right to submit the dispute to technical arbitration pursuant to Section 19.7(b) or to the dispute resolution process described in Section 19.2, Section 19.3 and Section 19.4. Within one (1) Business Day after its receipt of the decision, any Party may request the Consultant to interpret the decision or to correct any clerical, typographical or computation errors therein. The other Party shall have a right to comment within one (1) Business Day of its receipt of the requesting Party's request for interpretation and/or correction. If the Consultant considers the request justified, it shall comply with such request within three (3) Business Days after its receipt of such request. The correction and/or

interpretation of the decision shall take the form of an addendum and shall constitute part of the decision.

- (b) *Technical Arbitration.* The Parties may agree to submit any technical dispute under this Agreement to technical arbitration, which submission may be made without submitting the technical dispute to the Consultant pursuant to Section 19.7(a) or to the dispute resolution process described in Section 19.2, Section 19.3 and Section 19.4. Such technical arbitration shall be conducted by a Consultant, serving as an independent technical arbitrator, acceptable to the City and the Concessionaire (and if the Parties fail to agree upon the independent technical arbitrator within five (5) Business Days after the Parties agree to submit the dispute to technical arbitration, then the City and the Concessionaire shall each appoint an independent technical arbitrator and both such arbitrators shall be instructed to select a third independent technical arbitrator to conduct the technical arbitration). If the Party-appointed technical arbitrators are unable to agree upon a third technical arbitrator within five (5) Business Days after they are instructed by the Parties to select a third arbitrator, the Consultant shall select the independent technical arbitrator to conduct the technical arbitration as soon as possible. Such submission shall be in the form of written statements of position by one or both of the Parties, which statements shall be provided to both the other Party and the independent technical arbitrator, with each Party having an opportunity to respond to such written statements of the other Party and any requests for statements or information by the independent technical arbitrator, including in-person meetings; provided, however, that all such submissions by a Party shall be made within ten (10) Business Days of appointment of the independent technical arbitrator and, notwithstanding any provision herein to the contrary, any unresolved disputed items shall be determined by the independent technical arbitrator within seven (7) Business Days of receipt by the independent technical arbitrator of the Parties' submissions of information unless such independent technical arbitrator has good cause to extend such date for determination. The Parties shall each bear their own costs with respect to the arbitration of any such technical dispute and shall bear equally the cost of retaining such independent technical arbitrator. The independent technical arbitrator's award shall be in writing and state the reasons upon which it is based. Within one (1) Business Day after its receipt of the decision, any Party may request the independent technical arbitrator to interpret the decision or to correct any clerical, typographical or computation errors therein. The other Party shall have a right to comment within one (1) Business Day of its receipt of the requesting Party's request for interpretation and/or correction. If the independent technical arbitrator considers the request justified, it shall comply with such request within three (3) Business Days after its receipt of such request. The correction and/or interpretation of the decision shall take the form of an addendum and shall constitute part of the decision. The independent technical arbitrator's award shall be final and binding on the Parties, except in the event of fraud, partiality, or manifest error, or if the independent technical arbitrator has exceeded its mandate or otherwise lacked jurisdiction. Any Party that wishes to challenge the award must initiate arbitration in accordance with Section 19.4

within seven (7) Business Days of its receipt of the award and the arbitral panel must accept such matter for arbitration. The submission must set forth one or more of the limited grounds set out in this provision as the basis for its challenge in its request for arbitration, failing which the award shall be final and binding. In the event an arbitral panel composed pursuant to Section 19.4 decides that the award is not final and binding because of one or more grounds set out in this provision, it may proceed to determine the underlying issue de novo and its award shall constitute a final and binding determination of the dispute. Except in the event of a challenge to the award in accordance with this provision, each Party shall give effect to the award starting as of the eighth (8<sup>th</sup>) Day of its receipt of the award, including by paying the amount, if any, which becomes payable as a result of the award. If the amount payable as a result of the award is not so paid, interest will accrue on that amount at the Bank Rate. Judgment on the award may be entered in any court with competent jurisdiction. The independent technical arbitrator's award shall be final and binding on the Parties.

**ARTICLE 20**  
**MISCELLANEOUS**

**Section 20.1. Notice.** All notices, other communications and approvals required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be delivered, sent by facsimile (with hard copy sent via mail), certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

- (a) in the case of the City:

City of Indianapolis  
Mayors Office  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

ICE MILLER LLP  
One American Square  
Suite 2900  
Indianapolis, IN 46282  
Attention: Joseph DeGroff

- (b) in the case of the Concessionaire:

Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



with a copy to:

Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other persons or addresses as either Party may from time to time designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) on the Day it is delivered, or if such Day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth (4<sup>th</sup>) Business Day after mailing if sent by U.S. registered or certified mail.

**Section 20.2. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

**Section 20.3. Amendment.** This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

**Section 20.4. Waiver of Rights.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

**Section 20.5. Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstance is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or rendering any other provision or provisions herein contained invalid,

inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 19. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a manner that effectively entitles the City to have the same rights after the aforesaid determination of invalidity or unenforceability as before, the City shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

**Section 20.6. Governing Law.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the State of Indiana (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

**Section 20.7. Submission to Jurisdiction.** Subject to Article 19, any action or proceeding against the Concessionaire or the City relating in any way to this Agreement may be brought and enforced in the federal or state courts in the State of Indiana in Marion County, and each of the Concessionaire and the City hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now or hereafter have to the laying of venue of any such action or proceeding in such courts and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Service of process on the City may be made, either by registered or certified mail addressed as provided for in Section 20.1. Service of process on the Concessionaire may be made either by registered or certified mail addressed as provided for in Section 20.1 or by delivery to the Concessionaire's registered agent for service of process in the State of Indiana. If the Concessionaire is presented with a request for Documents by any administrative agency or with a subpoena duces tecum regarding any Documents which may be in its possession by reason of this Agreement, the Concessionaire shall give prompt notice to the City. The City may contest such process by any means available to it before such Documents are submitted to a court or other third party; provided, however, that the Concessionaire shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the subpoena or request is quashed or the time to produce is otherwise extended.

**Section 20.8. Further Acts.** The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and assurances and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

**Section 20.9. Costs.** Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

**Section 20.10. Interest.** Any amount payable under this Agreement and not paid when due shall bear interest at a variable nominal rate per annum equal on each Day to the Bank Rate then in effect, from the date such payment is due until payment and both before and after judgment.

**Section 20.11. Inurement and Binding Effect.** This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and be binding upon the Parties and their respective successors and assigns.

**Section 20.12. No Partnership or Third Party Beneficiaries.** Except as expressly provided herein to the contrary (including with respect to such rights as are expressly granted to each Collateral Assignee pursuant to this Agreement), nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the City and the Concessionaire, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any Person not a party to this Agreement.

**Section 20.13. Cumulative Remedies.** The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

**Section 20.14. Counterparts; Facsimile Execution.** This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

(Intentionally Left Blank)

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed on its behalf by its Mayor pursuant to due authorization of the City Council and the Concessionaire has caused this Agreement to be duly executed pursuant to due authorization, all as of the Day and year first above written.

CITY OF INDIANAPOLIS

BY: \_\_\_\_\_

CONCESSIONAIRE

BY: \_\_\_\_\_

**SCHEDULE 1**  
**METERED PARKING SYSTEM CONTRACTS**

1. Professional Services Agreement by and between Office of Corporate Counsel and T2 Systems, dated July 31, 2006.
2. Agreement for Parking Ordinance Enforcement and Coin Counting Services, by and between the City of Indianapolis, Department of Public Works and Denison Parking, Inc, dated May 27, 2004, as amended.
3. Service Agreement between Department of Public Works and Duncan Parking Technologies, Inc. for Purchase and Repair of Electronic Parking Meter Mechanisms and Purchase of Dual Head Parking Meter Housings, by and between the City of Indianapolis, Department of Public Works and Duncan Parking Technologies, Inc., dated July 9, 2007, as amended.
4. Right of Way Permit issued by the City in favor of Elite Management Services ("Elite") (on behalf of St. Elmo's).
5. Right of Way Permit issued by the City in favor of Elite (on behalf of Weber Grill).
6. Right of Way Permit issued by the City in favor of Elite (on behalf of Harry & Izzy's).
7. Right of Way Permit issued by the City in favor of Elite (on behalf of PF Chang's).
8. Right of Way Permit issued by the City in favor of Elite (on behalf of Ruth's Chris).
9. Right of Way Permit issued by the City in favor of Elite (on behalf of Bella Vita).

**SCHEDULE 2**  
**OPERATING STANDARDS**

### **SCHEDULE 3**

#### **METERED PARKING SYSTEM ASSETS**

1. All meter related equipment located at 1761 South West Street, Indianapolis, Indiana.
2. All Metering Devices, signage and equipment and materials used in connection with the operations of the Metered Parking System located in the following locations:
  - *Delaware Street*, on the west side, from a point one hundred forty-two (142) feet north of Market Street, to a point two hundred twenty-one (221) feet north of Market Street;
  - *Market Street*, on the south side, from a point sixty-seven (67) feet east of Capitol Avenue, to a point one hundred fifty-four (154) feet east of Capitol Avenue.
  - *Market Street*, on the north side, from Delaware Street to Alabama Street;
  - *Alabama Street*, on the west side, from Ohio Street to a point 169 feet south of Ohio Street;
  - *Blackford Street*, on the east side, from a point 671 feet south of New York Street, to a point 495 feet south of New York Street;
  - *East Street*, on the east side, from a point 35 feet north of Georgia Street, to a point 295 feet north of Georgia Street;
  - *East Street*, on the west side, from a point eighteen (18) feet north of Wabash Street to a point one hundred twenty-one (121) feet north of Wabash Street;
  - *Market Street*, on both sides, from a point 114 feet east of the east curblane of Alabama Street to a point 114 feet west of the west curblane of New Jersey Street;
  - *Market Street*, on both sides, from Capitol Avenue to Illinois Street;
  - *Market Street*, on both sides, from Pennsylvania Street to Delaware Street;
  - *South Street*, on both sides, from Capitol Avenue to Illinois Street;
  - *University Boulevard*, on the east side, from a point 174 feet north of New York Street to a point 483 feet north of New York Street;
  - *Wabash Street*, on the south side, from Illinois Street to Capitol Avenue;
  - *Ninth Street*, on the both sides, from Illinois Street to Meridian Street

- *Ninth Street*, on the south side, from a point 240 feet east of Meridian Street to Pennsylvania Street
- *Eleventh Street*, on the south side, from a point 190 feet east of Dr. Martin Luther King Jr. Street, to a point 326 feet east of Dr. Martin Luther King Jr. Street;
- *Eleventh Street*, on the south side, from a point 378 feet east of Dr. Martin Luther King Jr. Street, to a point 738 feet east of Dr. Martin Luther King Jr. Street;
- *Eleventh Street*, on the south side, from a point 862 feet east of Dr. Martin Luther King Jr. Street to Senate Avenue;
- *Fifteenth Street*, on the south side, from Capitol Avenue to Illinois Street;
- *Alabama Street*, on both sides, from Ohio Street to St. Clair Street;
- *Audubon Road*, on both sides, from a point 30 feet north of the north curblane of Washington Street, to a point 135 feet north of Washington Street;
- *Broad Ripple Avenue (Sixty-third Street)*, on both sides, from College Avenue to Winthrop Avenue;
- *Capitol Avenue*, on the east side, from Thirteenth Street to Fifteenth Street;
- *Capitol Avenue*, on the east side, from Georgia Street to a point 300 feet south of Georgia Street;
- *Capitol Avenue*, on the east side, from a point 205 feet north of Ohio Street to Washington Street;
- *Capitol Avenue*, on the east side, from St. Clair Street to New York Street;
- *Capitol Avenue*, on the west side, from Thirteenth Street to Sixteenth Street;
- *Capitol Avenue*, on the west side, from St. Clair Street to Ohio Street;
- *Capitol Avenue*, on the west side, from Maryland Street to a point 180 feet north of Maryland Street;
- *Capitol Avenue*, on the west side, from 120 feet south of Washington Street, to a point 50 feet south of Washington Street;
- *Carrollton Avenue*, on the west side, from Sixty-second Street to Broad Ripple Avenue (Sixty-third Street);
- *Chesapeake Street*, on the south side, from Pennsylvania Street to Meridian Street;



- *College Avenue*, on both sides, from Sixty-second Street to Broad Ripple Avenue (Sixty-third Street);
- *Court Street*, on the south side, from Talbot Street to Pennsylvania Street;
- *Delaware Street*, on the east side, from Ohio Street to St. Clair Street;
- *Delaware Street*, on the west side, from Conseco Court to Michigan Street;
- *Delaware Street*, on the west side, from North Street to St. Clair Street;
- *Delaware Street*, on the west side, from Wabash Street to Michigan Street;
- *Fort Wayne Avenue*, on the northwest side, from Pennsylvania Street to St. Clair Street;
- *Frontage Road*, on the south side, from a point west of the taxicab stand, from the sheriff's cars zone to the taxicab stand;
- *Georgia Street*, on the north side, from Capitol Avenue to Delaware Street;
- *Georgia Street*, on the south side, from a point 90 feet east of Capitol Avenue to Pennsylvania Street;
- *Guilford Avenue*, on both sides, from Broad Ripple Avenue (Sixty-third Street) to Westfield Boulevard;
- *Guilford Avenue*, on the west side, from Sixty-second Street to Broad Ripple Avenue (Sixty-third Street);
- *Hudson Street*, on the east side, from Ohio Street to New York Street;
- *Illinois Street*, on the east side, from Jackson Place to Walnut Street;
- *Illinois Street*, on the east side, from St. Clair Street to Tenth Street;
- *Illinois Street*, on the east side, from South Street to a point 240 feet south of Jackson Place North Drive;
- *Illinois Street*, on the west side, from Louisiana to Maryland Street;
- *Illinois Street*, on the west side, from a point 200 feet south of New York Street to Eleventh Street;
- *Illinois Street*, on the west side, from Washington Street to Ohio Street;
- *Indiana Avenue*, on both sides, from New York Street to North Street;
- *Jackson Place*, on the north side, from Illinois Street to Meridian Street;

- *Louisiana Street*, on the north side, from Alabama Street to New Jersey Street;
- *Louisiana Street*, on the north side, from McCrea Street to Meridian Street;
- *Market Street*, on the north side, from Illinois Street to Monument Circle;
- *Market Street*, on the north side, from Monument Circle to a point 138 feet east of Monument Circle;
- *Market Street*, on the south side, from a point 73 feet east of Illinois Street to Monument Circle;
- *Market Street*, on the south side, from Monument Circle to Pennsylvania Street;
- *Maryland Street*, on both sides, from Capitol Avenue to Delaware Street;
- *Maryland Street*, on the north side, from Missouri Street to Capitol Avenue;
- *Massachusetts Avenue*, on both sides, from Delaware Street to College Avenue;
- *Massachusetts Avenue*, on the north side, from a point 165 feet northeast of Carrollton Avenue to Bellefontaine Street;
- *Massachusetts Avenue*, on the south side, from a point 455 feet northeast of St. Clair Street, to a point 525 feet northeast of St. Clair Street;
- *Massachusetts Avenue*, on the south side, from a point 735 feet northeast of St. Clair Street, to a point 955 feet northeast of St. Clair Street;
- *McCrea Street*, on the west side, from Jackson Place, South Drive, to Louisiana Street;
- *Meridian Street*, on both sides, from Seventeenth Street to Nineteenth Street;
- *Meridian Street*, both sides, from Monument Circle to Ohio Street;
- *Meridian Street*, on the east side, from Thirteenth Street to a point 157 feet south of Sixteenth Street;
- *Meridian Street*, on the east side, from a point 118 feet north of Georgia Street to Washington Street;
- *Meridian Street*, on the east side, from Louisiana Street to Georgia Street;
- *Meridian Street*, on the east side, from Norwood Street to Merrill Street;
- *Meridian Street*, on the east side, from New York Street to a point 109 feet south of St. Joseph Street;

- *Meridian Street*, on the west side, from a point 165 feet north of Ohio Street to a point 200 feet south of St. Joseph Street;
- *Meridian Street*, on the east side, from Washington Street to a point 189 feet north of Washington Street;
- *Meridian Street*, on the west side, from a point 114 feet north of Thirteenth Street to a point 157 feet south of Sixteenth Street;
- *Meridian Street*, on the west side, from a point 145 feet north of Washington Street to Monument Circle;
- *Michigan Street*, on both sides, from Meridian Street to Pennsylvania Street;
- *Michigan Street*, on the north side, from East Street to New Jersey Street;
- *New Jersey Street*, on both sides, from New York Street to Vermont Street;
- *New Jersey Street*, on both sides, from Pearl Street to Washington Street;
- *New Jersey Street*, on both sides, from Washington Street to New York Street;
- *New Jersey Street*, on both sides, from Vermont Street to St. Clair Street;
- *New Jersey Street*, on the east side, from South Street to Louisiana Street;
- *New Jersey Street*, on the west side, from South Street to Louisiana Street;
- *New York Street*, on the north side, from Delaware Street to a point 170 feet east of Delaware Street;
- *New York Street*, on the north side, from a point 106 feet east of Illinois Street to Meridian Street;
- *New York Street*, on the south side, from Pennsylvania Street to East Street;
- *North Street*, on the north side, from Alabama Street to East Street;
- *North Street*, on the north side, from Meridian Street to a point 100 feet east of Senate Avenue;
- *North Street*, on the north side, from Pennsylvania Street to a point 125 feet east of Meridian Street;
- *North Street*, on the south side, from Alabama Street to New Jersey Street;
- *North Street*, on the south side, from Senate Avenue to a point 150 feet west of Pennsylvania Street;

- *Ohio Street*, on both sides, from Delaware Street to East Street;
- *Ohio Street*, on the north side, from a point 95 feet east of West Street to Capitol Avenue;
- *Ohio Street*, on the north side, from a point 250 feet east of East Street to a point 440 feet east of East Street;
- *Ohio Street*, on the south side, from Capitol Avenue to a point 85 feet west of Capitol Avenue;
- *Ohio Street*, on the south side, from Capitol Avenue to Illinois Street;
- *Ohio Street*, on the south side, from Pennsylvania Street to Delaware Street;
- *Ohio Street*, on the south side, from West Street to a point 85 feet west of Capitol Avenue;
- *Pearl Street*, on the north side, from Pennsylvania Street to Meridian Street;
- *Pearl Street*, on the north side, from Senate Avenue to Missouri Street;
- *Pennsylvania Street*, on the east side, from a point 145 feet south of New York Street to Michigan Street;
- *Pennsylvania Street*, on the east side, from North Street to Tenth Street;
- *Pennsylvania Street*, on the east side, from Ohio Street to Consecro Court;
- *Pennsylvania Street*, on the west side, from South Street to Ohio Street;
- *Pennsylvania Street*, on the west side, from New York Street to Michigan Street;
- *Pennsylvania Street*, on the west side, from Ninth Street to Eleventh Street;
- *Pennsylvania Street*, on the west side, from North Street to a point 246 feet north of St. Clair Street;
- *Pennsylvania Street*, on the east side, from St. Clair Street to a point 395 feet south of Eleventh Street;
- *Pennsylvania Street*, on the west side, from St. Clair Street to Eleventh Street;
- *St. Clair Street*, on the south side, from Meridian Street to Fort Wayne Avenue, except the portion thereof from the northwest curblineline of Fort Wayne Avenue to a point 122 feet west of said curblineline;
- *East St. Clair Street*, on the north side, from Meridian Street to Pennsylvania Street;

- *St. Joseph Street*, on the south side, from Illinois Street to Meridian Street;
- *St. Joseph Street*, on the south side, from Meridian Street to Pennsylvania Street;
- *Senate Avenue*, on the east side sides, from Tenth Street to Eleventh Street.
- *Senate Avenue*, on both sides, from Fifteenth Street to Sixteenth Street.
- *Senate Avenue*, on both sides, from Michigan Street to Walnut Street;
- *Senate Avenue*, on both sides, from South Street to south property line of Convention Center;
- *Senate Avenue*, on the east side, from Washington Street to Michigan Street, except that point from 248 feet south of Ohio Street to a point 382 feet south of Ohio Street;
- *Senate Avenue*, on the west side, from New York Street to Michigan Street;
- *Senate Avenue*, on the west side, from Washington Street to Miami Street, except that point from 260 feet south of Ohio Street to a point 340 feet south of Ohio Street;
- *South Street*, on both sides, from Illinois Street to Pennsylvania Street;
- *Vermont Street*, on both sides, from Senate Avenue to Alabama Street;
- *Vermont Street*, on the north side, from Alabama Street to Cleveland Street;
- *Vermont Street*, on the south side, from New Jersey Street to East Street;
- *Vermont Street*, on the south side, from New Jersey Street to a point 168 feet west of New Jersey Street;
- *Vermont Street*, on the north side, from West Street to Toledo Street;
- *Virginia Avenue*, on the north side, from Louisiana Street to South Street;
- *Virginia Avenue*, on the south side, from Conrail Railroad to Louisiana Street;
- *Virginia Avenue*, on the north side, from a point 150 feet southeast of Pennsylvania Street to a point 230 feet southeast of Pennsylvania Street;
- *Virginia Avenue*, on the north side, from a point 270 feet southeast of Pennsylvania Street to a point 467 feet southeast of Pennsylvania Street;
- *Virginia Avenue*, on the south side, from a point 150 feet southeast of Pennsylvania Street to a point 467 feet southeast of Pennsylvania Street;
- *Wabash Street*, on the south side, from Alabama Street to New Jersey Street;

- *Wabash Street*, on the south side, from Pennsylvania Street to Delaware Street;
- *Walnut Street*, on both sides, from Delaware Street to Hudson Street;
- *East Walnut Street*, on the north side, from Delaware Street to Talbot Street;
- *East Walnut Street*, on the south side, from Delaware Street to Pennsylvania Street;
- *West Walnut Street*, on both sides, from Meridian Street to Capitol Avenue;
- *Washington Street*, on the north side, from Capitol Avenue to a point 536 feet east of West Street;
- *Washington Street*, on the north side, from Delaware Street to Pennsylvania Street;
- *Washington Street*, on the north side, from Illinois Street to a point 137 feet west of Illinois Street;
- *Washington Street*, on the north side, from a point two hundred sixty-eight (268) feet east of Illinois Street to Pennsylvania Street;
- *Washington Street*, on the north side, from a point 180 feet east of West Street to a point 389 feet east of West Street;
- *Washington Street*, on the south side, from Alabama Street to a point 173 feet west of Capitol Avenue;
- *Washington Street*, on the north side, from East Street to Alabama Street;
- *Washington Street*, on the south side, from a point 224 feet east of Delaware Street to a point 173 feet west of Capitol Avenue;
- *Washington Street*, on the south side, from a point 530 feet west of Capitol Avenue to a point 602 feet west of Capitol Avenue;
- *Washington Street*, on the south side, from a point 1,092 feet west of Capitol Avenue to a point 142 feet east of West Street;
- *Washington Street*, on the south side, from East Street to a point 226 feet east of New Jersey Street;
- *Westfield Boulevard*, on both sides, from Guilford Avenue to Winthrop Avenue;
- *Westfield Boulevard*, on the north side, from Guilford Avenue to a point 487 feet west of Guilford Avenue;
- *Winthrop Avenue*, on the west side, from Broad Ripple Avenue (Sixty-third Street) to Westfield Boulevard.

- *Jackson Place*, on the north side, from a point 39 feet east of the east curbline of McCrea Street to a point 78 feet east of the east curbline of McCrea Street (for motorcycles);
  - *Meridian Street*, on the east side, from a point 28 feet south of the south curbline of Georgia Street to a point 69 feet south of the south curbline of Georgia Street (for motorcycles);
  - *Virginia Avenue*, on the south side, from a point 140 feet east of the east curbline of Pennsylvania Street to a point 160 feet east of the east curbline of Pennsylvania Street (for motorcycles);
3. Future Authorized Metered Parking Spaces pursuant to the Metered Parking Ordinance.
- 100 Metered Parking Spaces along the northeast portion of Massachusetts Avenue.
  - 30 Metered Parking Spaces along the northside of East Westfield Boulevard between College Avenue and Guilford Avenue.

The Metered Parking System Assets do not include the sixteen (16) Metered Spaces in the City Market parking lot or the four (4) Metered Spaces north of Market Street and on the west side of Alabama Street immediately adjacent to the City Market.

## SCHEDULE 4

### METHODOLOGY FOR CALCULATING CERTAIN CONCESSIONAIRE COMPENSATION

For purposes of this Schedule,  $t$  = year since Closing Date and  $T$  = number of years of the Term.

Also for purposes of this Schedule, Period of Operation is calculated on an aggregate hourly basis for the full Period of Operation of such Metered Parking Space in a given Zone.

Also for purposes of this Schedule, Concessionaire Parking Enforcement Revenue (year  $t$ ) shall mean the prior year's Concessionaire Parking Enforcement Revenue, provided, however, that in the first year of the Term the Concessionaire Parking Enforcement Revenue in the latter half of the Year shall be multiplied by 2 in order to annualize a more normalized level of ticket issuances. Furthermore, all Concessionaire Parking Enforcement Revenue shall exclude revenue attributable to Residential Permits.

#### 1. LOST METERED PARKING REVENUE AND CONCESSIONAIRE PARKING ENFORCEMENT REVENUE FOR PERMANENT REMOVALS

Lost Metered Parking Revenue and Concessionaire Parking Enforcement Revenue for the Permanent Removal of a Metered Parking Space = ((a) + (b) + (c)) \* (d) as defined below

- (a) Present Value of lost Metered Parking Revenue from Permanent Removal of a Metered Parking Space in year  $t$  =

$$\sum_{i=t+1}^T ((\text{Expected Utilization Rate (year } t) * [1 + \text{Expected Utilization Growth Rate}]^{(i-t)}) * (1 + \text{Technological and Operational Impact}) * \text{Applicable Metered Parking Fee (year } i) * \text{Period of Operation (year } t)) / (1 + \text{Discount Rate})^{(i-t)})$$

- (b) Present Value of Concessionaire Parking Enforcement Revenue from the Permanent Removal of a Metered Parking Space in year  $t$  =

$$\sum_{i=t+1}^T \text{Expected Concessionaire Parking Enforcement Revenue (year } i) / (1 + \text{Discount Rate})^{(i-t)}$$

where, Expected Concessionaire Parking Enforcement Revenue (year  $i$ ) = Concessionaire Parking Enforcement Revenue (year  $t$ ) / Metered Parking Spaces (year  $t-1$ ) \* (1 + Expected Utilization Growth Rate)<sup>(i-t)</sup> \* (1 + Technological and Operational Impact) \* [Applicable Parking Violation Fine (year  $i$ ) / Applicable Parking Violation Fine (year  $t$ )]



- (c) Value of lost Metered Parking Revenue and Concessionaire Parking Enforcement Revenue from Permanent Removal of a Metered Parking Space in year  $t =$

$$[(\text{Concessionaire Parking Enforcement Revenue (year } t) + \text{lost Metered Parking Revenue (year } t)] * (\text{number of Days after the Permanent Removal of Metered Parking Space} / 365)$$

- (d) Adjustment for City System Revenue Sharing Amount in year  $t =$

$$(\text{System Revenue (year } t-1) - \text{City System Revenue Sharing Amount (year } t-1)) / \text{System Revenue (year } t-1)$$

## 2. LOST REVENUE FOR DECREASE IN METERED PARKING FEE

Lost Metered Parking Revenue for a Metered Parking Space from a decrease in Metered Parking Fee = ((a) + (b)) \* (c) as defined below

- (a) Present Value of lost Metered Parking Revenue of a Metered Parking Space from a decrease in Metered Parking Fee in year  $t =$

$$\sum_{i=t+1}^T ([\text{Expected Utilization Rate (year } t) * (1 + \text{Expected Utilization Growth Rate})^{(i-t)}] * \Delta \text{ Metered Parking Fee (year } i) * (1 + \text{Technological and Operational Impact}) * \text{Period of Operation (year } t) / (1 + \text{Discount Rate})^{(i-t)})$$

where,  $\Delta$  Metered Parking Fee (year  $i$ ) = Applicable Metered Parking Fee (year  $i$ ) – New Applicable Metered Parking Fee (year  $i$ )

- (b) Value of lost Metered Parking Revenue of a Metered Parking Space from a decrease in Metered Parking Fee in year  $t =$  lost Metered Parking Revenue from a decrease in Metered Parking Fee (year  $t$ ) \* (number of Days after decrease in Metered Parking Fee / 365)

- (c) Adjustment for City System Revenue Sharing Amount in year  $t =$

$$(\text{System Revenue (year } t-1) - \text{City System Revenue Sharing Amount (year } t-1)) / \text{System Revenue (year } t-1)$$

## 3. LOST REVENUE FOR DECREASE IN PERIOD OF OPERATION

Lost Metered Parking Revenue and Concessionaire Parking Enforcement Revenue for a Metered Parking Space from a decrease in Period of Operation = ((a) + (b) + (c)) \* (d) as defined below

- (a) Present Value of lost Metered Parking Revenue from a decrease in Period of Operation in year  $t =$

$$\sum_{i=t+1}^T ([\text{Expected Utilization Rate (year } t) * (1 + \text{Expected Utilization Growth Rate})^{(i-t)}] * \text{Applicable Metered Parking Fee (year } i) * (1 + \text{Technological and Operational Impact}) * \Delta \text{ Period of Operation (year } i)) / (1 + \text{Discount Rate})^{(i-t)}$$

where,  $\Delta$  Period of Operation (year  $i$ ) = number of aggregate hours represented by the Period of Operation (year  $i-1$ ) – number of aggregate hours represented by the new Period of Operation (year  $i$ )<sup>†</sup>

<sup>†</sup>For purposes of this calculation, Period of Operation (year  $i-1$ ) shall mean the Period of Operation prior to decrease in the Period of Operation in year  $t$ , and Period of Operation (year  $i$ ) shall mean the Period of Operation following the decrease in the Period of Operation in year  $t$ .

- (b) Present Value of lost Concessionaire Parking Enforcement Revenue from a decrease in Period of Operation of a Metered Parking Space in year  $t$  =

$$\sum_{i=t+1}^T \text{Expected Concessionaire Parking Enforcement Revenue (year } i) / (1 + \text{Discount Rate})^{(i-t)}$$

where, Expected Concessionaire Parking Enforcement Revenue (year  $i$ ) = Concessionaire Parking Enforcement Revenues (year  $t$ ) / Metered Parking Spaces (year  $t-1$ ) \* (1 + Expected Utilization Growth Rate)<sup>(i-t)</sup> \* (1 + Technological and Operational Impact) \* (1 - [Period of Operation (year  $i$ ) / Period of Operation (year  $t-1$ )])

- (c) Value of total lost revenue from a decrease in Period of Operation of a Metered Parking Space in year  $t$  =

[lost Metered Parking Revenues from a decrease in Period of Operation (year  $t$ ) + lost Concessionaire Parking Enforcement Revenue from a decrease in Period of Operation (year  $t$ )] \* (number of Days after decrease in Period of Operation / 365)

- (d) Adjustment for City System Revenue Sharing Amount in year  $t$  =

(System Revenue (year  $t-1$ ) - City System Revenue Sharing Amount (year  $t-1$ )) / System Revenue (year  $t-1$ )

## SCHEDULE 5

### SCHEDULE OF PARKING FEES AND SCHEDULE OF PARKING FINES

#### Section 1. Schedule of Parking Fees.

Attached hereto as Exhibit A, is a diagram of the four applicable parking zones (the "Zones" or individually a "Zone"). The Parking Fees for the Metered Parking System shall vary based on which Zone each Metered Parking Space is located. The four Zones are as follows:

Zone 1 (Downtown core parking)

Zone 2 (Downtown non-core parking)

Zone 3 (Other parking outside of Zones 1, 2 and 4)

Zone 4 (Broad Ripple parking)

#### (a) *Rate*

The maximum hourly Metered Parking Fee for any Metered Parking Space shall be as follows:

<b>Effective Date:</b>	<b>Current</b>	<b>1/1/2011</b>	<b>1/1/2012</b>	<b>1/1/2013*</b>
Zone 1: Downtown Core**	\$0.75	\$1.00	\$1.50	12/31/12 fee plus Adjusted for Inflation
Zone 2: Downtown Other	\$0.75	\$1.00	\$1.00 plus Adjusted for Inflation	12/31/12 fee plus Adjusted for Inflation
Zone 3: Residential	\$0.75	\$0.75	\$1.00 plus Adjusted for Inflation	12/31/12 fee plus Adjusted for Inflation
Zone 4: Broad Ripple **	\$0.75	\$1.00	\$1.50	12/31/12 fee plus Adjusted for Inflation
*Beginning 1/1/2013 and continuing until the end of the Term, the hourly Metered Parking Fee shall be Adjusted for Inflation pursuant to this Section 1(a) of Schedule 5.				

<b>Effective Date:</b>	<b>Current</b>	<b>1/1/2011</b>	<b>1/1/2012</b>	<b>1/1/2013*</b>
**The initial hourly rate increase to \$1.00 for each of Zone 1 and Zone 4 will not take effect until Concessionaire has implemented electronic metering devices as set forth in <u>Section 4.4</u> of the Agreement for each Metered Parking Space in each respective Zone.				

For purposes of this Schedule of Metered Parking Fees, "Adjusted for Inflation" shall mean an increase to the Metered Parking Fee in amount equal to the increase to the Index based on the percentage increase (if any) of the Index from November 30 of the Year that is two Years prior to the Year such increase is to take place to December 1 of the Year immediately prior to the Year such increase is to take place; provided, however that any such increase shall be effective after the notice provisions set forth in Section 2 below have been satisfied and shall be in increments of \$0.25 and rounded down accordingly.

For the avoidance of doubt, the Concessionaire shall have the unfettered ability to charge any Metered Parking Fee for any Metered Parking Space provided that such Metered Parking Fee is equal to or less than the maximum Metered Parking Fee set forth in this Schedule 5.

*(b) Duration*

The maximum duration a vehicle may continuously park in a Metered Parking Space is two (2) hours, provided that once a particular Zone has implemented electronic metering devices as set forth in Section 4.4 of the Agreement for each Metered Parking Space in a respective Zone, an incremental charge of \$0.50 for the third hour and \$0.50 for the fourth hour may be charged for vehicles continuously parked in such Metered Parking Space for such four hour period, which \$0.50 incremental charge shall be Adjusted for Inflation from November 30 of the Year that is two Years prior to the Year such increase is to take place to December 1 of the Year immediately prior to the Year such increase is to take place; provided, however that any such increase shall be in increments of \$0.25 and be rounded down accordingly.

**Section 2. Notice of Change of Metered Parking Fees.**

(a) If the Concessionaire desires to change any Metered Parking Fee (including increases or decreases in any Metered Parking Fee) pursuant to Section 1 of this Schedule, it shall give notice of such change (i) to the City no later than ten (10) Days prior to the implementation of such change and (ii) to the public in accordance with Section 2(b) of this Schedule beginning, but not earlier than, thirty (30) Days prior to the implementation of such change.

(b) The Concessionaire shall use commercially reasonable efforts to (i) provide notice to the public of all Parking Fees and (ii) inform the public of any pending increase in the maximum Metered Parking Fee for a particular Zone during the thirty (30)-Day period prior to the implementation of such change. The Concessionaire shall maintain a website on the Internet that states all maximum Metered Parking Fee and pending Metered Parking Fee changes. The concessionaire shall make known to the public and maintain a telephone number to enable any

person to request a printed description of all Parking Fees and pending maximum Metered Parking Fee changes. The Concessionaire may modify any of the aforesaid means of communication with the public consistent with any developments in common practice relating to means of comparable communication.

### **Section 3. Period of Operation**

The Period of Operation for each Metered Parking Space is as follows:

<b><u>Metered Parking Area</u></b>	<b><u>Hours of Operation</u></b>
Zone 1	Monday – Saturday: 7 a.m. – 9 p.m.
Zone 2	Monday – Saturday: 7 a.m. – 8 p.m.
Zone 3	Monday – Friday: 7 a.m. – 6 p.m.
Zone 4	Monday – Saturday: 7 a.m. – 11 p.m.

Additionally, there will be no Period of Operation for Metered Parking Spaces on the following holidays:

- (a) New Year's Day;
- (b) Dr. Martin Luther King Day;
- (c) Presidents Day;
- (d) Memorial Day;
- (e) Independence Day;
- (f) Labor Day;
- (g) Thanksgiving Day;
- (h) Christmas Day;

#### Section 4. Schedule of Parking Fines

(a) The Concessionaire shall be entitled to receive all Parking Enforcements Revenue related to Parking Violation Fines collected in respect of the following sections of the Revised Code of the Consolidated City and County Indianapolis/Marion, Indiana, as amended (the "Indianapolis Code") and the State of Indiana Code:

Meter Code	Ordinance Code	Applicable Fine
13B, 14, 14A, 111	621-111	\$100.00
	621-203	\$20.00
31, 31A	621-210	\$20.00
[ ]	621-211	\$20.00
32, 32A, 32B, 32C, 216	621-216	\$20.00
[ ]*	[ ]*	\$20.00

\*The City acknowledges and agrees that the Concessionaire shall be authorized to conduct Parking Enforcement in respect of the Residential Permits pursuant to this Meter Code and Ordinance Code. **[Parking Enforcement for Residential Permits will be added in the Metered Parking System Ordinance].**

(b) The Concessionaire shall be entitled to enforce through its Enforcement Contractor the following sections of the Indianapolis Code and the State of Indiana Code, but is not entitled to receive any Parking Enforcement Revenue related to such violation:

Violation Code	Ordinance Code or Statute	Applicable Fine
01A, 431	431-108	\$20.00
	441-214	\$20.00
	441-363	\$20.00
	611-501	\$15.00
	611-506	\$15.00
09, 09A, 106	621-106	\$25.00
	621-107	\$20.00
	621-108	\$20.00
	621-110	\$100.00
	621-112	\$20.00
16, 16A, 23, 113, 120	621-113	\$20.00
39A, 430	621-114	\$20.00
	621-115	\$20.00
19	621-116	\$20.00

Violation Code	Ordinance Code or Statute	Applicable Fine
20	621-117	\$20.00
22A, 119	621-119	\$20.00
23A	621-120	\$20.00
	621-121	\$20.00
25, 25B, 28A, 37A, 37B, 121	621-122	\$20.00
	621-123	\$20.00
27, 27A, 125, 441	621-124	\$20.00
03A, 03B, 28	621-125	\$25.00
	621-126	\$20.00
	621-306	\$25.00
	621-404	\$20.00
	621-405	\$20.00
	621-430	\$25.00
38, 38A, 501	621-501	\$75.00
	621-502	\$75.00
	5-16-9-5	\$50.00
	5-16-9-8	\$50.00

## **Section 5. Changes to Parking Fines and Convenience Fees**

The minimum Parking Violation Fine that can be charged for any parking violation shall be no less than the greater of (i) the fines enumerated for each Meter and Ordinance Code in Section 4 of this Schedule 5, or (ii) three times the maximum hourly rate of the applicable Metered Parking Space as of the date of the violation; provided, however that the amount of such Parking Violation Fines shall be increased in amount equal to as Adjusted for Inflation for each Year; provide, however that any such increase shall be in \$2 increments and be rounded down accordingly. In addition, the Concessionaire shall be entitled to charge an industry standard convenience fee for the use of web-based and IVR-based payments consistent with industry standards, which fee in the first year of operation shall be \$2.95 per usage and will be Adjusted for Inflation thereafter.

## **EXHIBIT A**

### **Description of Zones**

- (1) *Parking meter zone 1* hereby is established to include all public rights-of-way located within the area described as follows:

Beginning at the intersection of the west right-of-way line West Street and the north right-of-way line of New York Street; thence east to the west right-of-way line of Delaware Street; thence north to the north right-of-way line of Allegheny Street; thence east to the west right-of-way line of Alabama Street; thence north to the north right-of-way line of Michigan Street; thence east to the west right-of-way line of Massachusetts Avenue; thence northeast to the north right-of-way line of St. Clair Street; thence east to the east right-of-way line of Massachusetts Avenue; thence southwest to the east right-of-way line of East Street; thence south to the north right-of-way line of Vermont Street; thence east to the east right-of-way line of East Street; thence south to the south right-of-way line of Vermont Street; thence west to the east right-of-way line of Alabama Street; thence south to the south right-of-way line of Maryland Street; thence west to the east right-of-way line of Delaware Street; thence south to the north right of way line of the Consolidated Rail Corporation (Conrail) that runs through Union Station; thence west to the west right-of-way line of Delaware Street; thence north to the south right of way line of Maryland Street; thence west to the east right-of-way line of Pennsylvania Street; thence south to the south right-of-way line of Jackson Place; thence west to the west right-of-way line of Capitol Avenue; thence north to the south right-of-way line of Maryland Street; thence west to the west right-of-way line of West Street; and north to the point of beginning.

- (2) *Parking meter zone 2* hereby is established to include all public rights-of-way located within the areas described as follows:

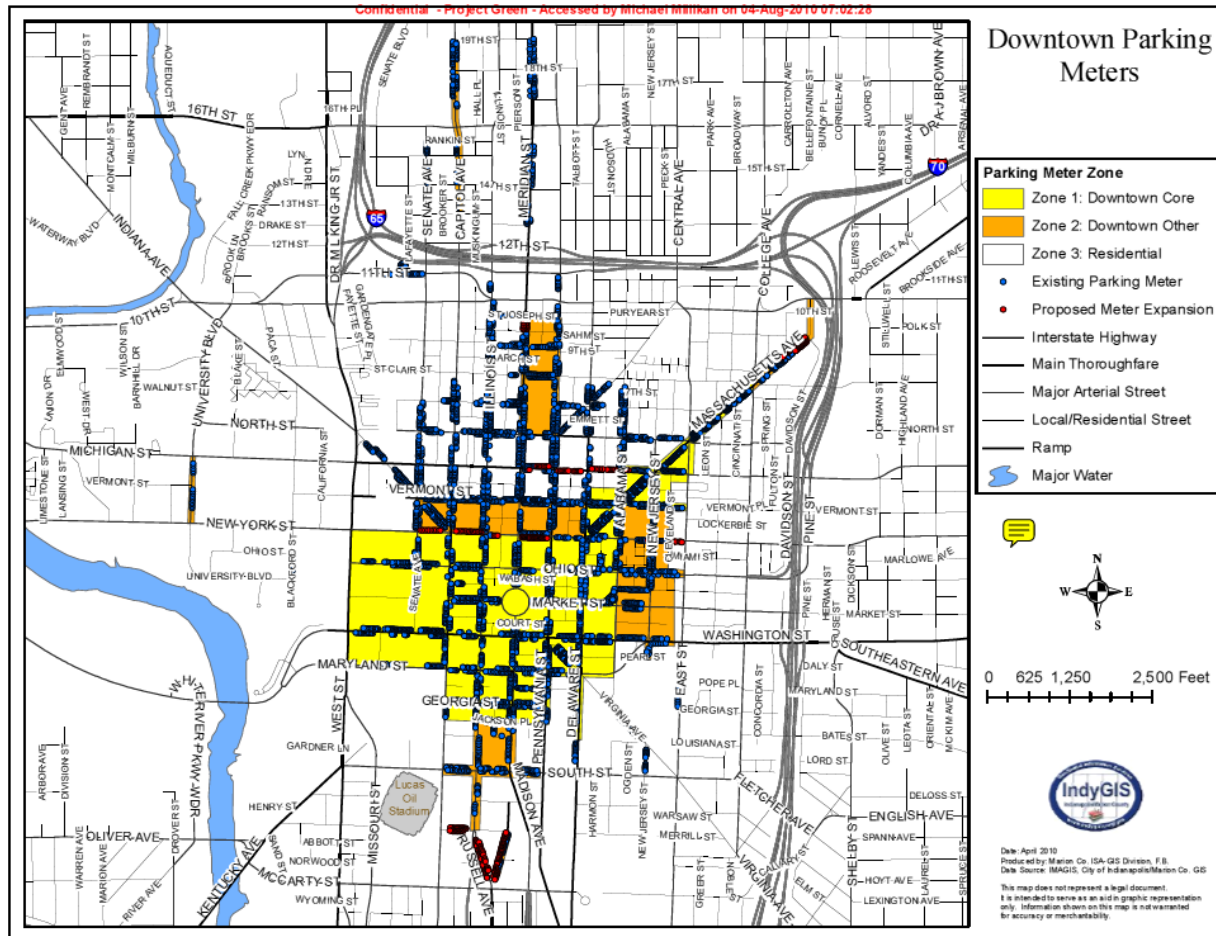
- a. The entire right-of-way width of University Boulevard from the north curblineline of New York Street to the south curblineline of Michigan Street;
- b. Beginning at the intersection of the west right-of-way line of Meridian Street and the north right-of-way line of St. Joseph Street, thence east to the east right-of-way line of Pennsylvania Street, thence south to the south right-of-way line of North Street, thence west to the west right-of-way line of Meridian Street, and thence north to the point of beginning;
- c. The entire right-of-way width of Massachusetts Avenue from the north right-of-way line of St. Clair Street to the south curblineline of Tenth Street;
- d. Beginning at the intersection of the west right-of-way line of Senate Avenue and the north right-of-way line of Vermont Street, thence east to the west right-of-way line of Delaware Street, thence south to the north right-of-way line of New York Street, thence west to the west right-of-way line of Senate Avenue, and thence north to the point of beginning;
- e. Beginning at the intersection of the east right-of-way line of Alabama Street and the south right-of-way line of Vermont Street, thence east to the east right-of-way line of Cleveland Street, thence south to the north right-of-way line of Ohio Street, thence east to the east right-of-way line of East Street, thence south to the south right-of-way line of Washington Street, thence west to the east right-of-way line of New Jersey Street, thence south to the south right-of-way line of Pearl Street, thence west to the west right-of-way line of New Jersey Street, thence north to the south right-of-way line of Washington Street, thence west to the east right-of-way line of Alabama Street, and thence north to the point of beginning;

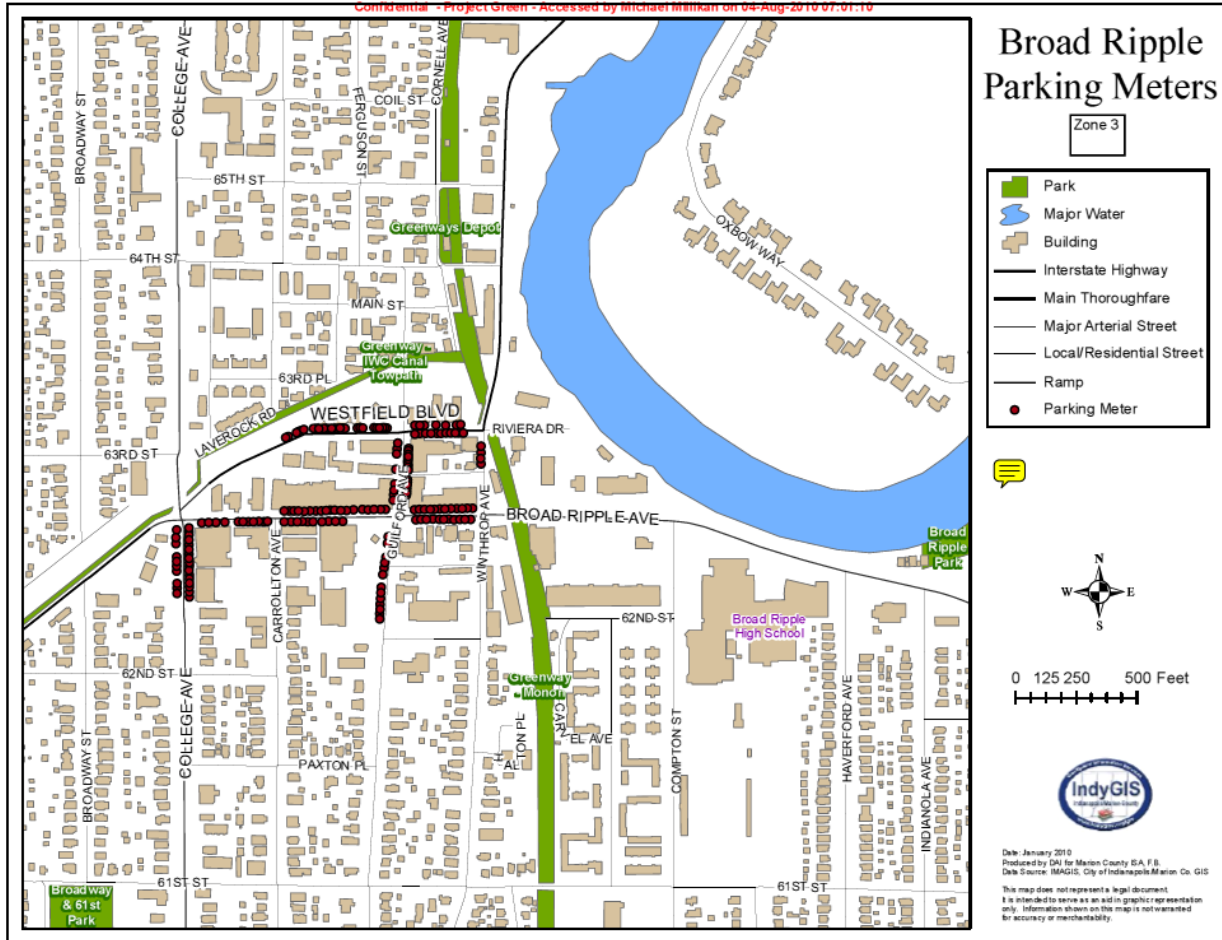


- f. Beginning at the intersection of the west right-of-way line of Illinois Street and the south right-of-way line of Jackson Place, thence east to the east right-of-way line of Meridian Street, thence south to the north right-of-way line of South Street, thence east to the west curblineline of Pennsylvania Street, thence south to the south right-of-way line South Street, thence west to the east right-of-way line of Illinois Street, thence south to the north curblineline of Merrill Street, thence west to the west right-of-way line of Illinois Street, thence north to the south right-of-way line of South Street, thence west to the east curblineline of Capitol Avenue, thence north to the north right-of-way line of South Street, thence east to the west right-of-way line of Illinois Street, and thence north to the point of beginning; and
  - g. The entire right-of-way width of Meridian Street from the north curblineline of McCarty Street to the south curblineline of Merrill Street.
  - h. The entire right-of-way width of Capitol Ave from the north curblineline of 19<sup>th</sup> Street to the south curblineline of 13<sup>th</sup> Street.
- (3) *Parking meter zone 3* hereby is established to include all public rights-of-way located in the city that are not located within parking meter zones 1, 2 and 4.
- (4) *Parking meter zone 4* hereby is established to include all public rights-of-way located within the areas described as follows:

Beginning at the intersection of the west right-of-way line of College Avenue and the north right-of-way line of Westfield Boulevard; thence curving northeasterly and east to the east right-of-way line of Winthrop Avenue; thence south to the south right-of-way line of Broad Ripple Avenue; thence west to the east right-of-way line of Guilford Avenue; thence south to the north curblineline of Sixty-Second Street; thence west to the west right-of-way line of Guildford Avenue; thence north to the south right-of-way line of Broad Ripple Avenue; thence west to the east right-of-way line of College Avenue; thence south to the north curblineline of Sixty-Second Street; thence west to the west right-of-way line of College Avenue; and thence north to the point of beginning.

## Diagram of Zones





## **SCHEDULE 6**

### **INITIAL PERMANENT REMOVAL PAYMENT**

In the event that the City causes any Permanent Removal prior to the first (1st) anniversary of the Closing Date, the Permanent Removal Payment payable by the City to the Concessionaire in respect of any such Permanent Removal shall be equal to the amount set forth below:

- Zone 1: \$36,000 per Permanent Removal;
- Zone 2: \$23,000 per Permanent Removal;
- Zone 3: \$16,000 per Permanent Removal; and
- Zone 4: \$40,000 per Permanent Removal.

## SCHEDULE 7

### FORM OF LEGAL OPINION OF THE CITY

[Letterhead of Counsel to the City]

[Closing Date]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ladies and Gentlemen:

We have acted as special counsel to the City of Indianapolis (the "City") in connection with the grant of the right to operate, maintain and improve the Metered Parking System pursuant to the City of Indianapolis Parking Meter Concession Agreement, dated as of \_\_\_\_\_, 2010 (the "Agreement"), by and between the City and \_\_\_\_\_ (the "Concessionaire"). This opinion is being delivered to you pursuant to Section 2.4(a) of the Agreement. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Agreement and (ii) \_\_\_\_\_ (the "Metered Parking System Ordinance"). In rendering our opinion, we have also examined originals or copies, certified or otherwise identified to our satisfaction, of the following (collectively, the "Authorization Documents"): (i) a certificate executed by the Mayor and the President of the City Council of even date herewith as to certain factual matters; (ii) a copy of the Metered Parking System Ordinance, certified by \_\_\_\_\_; and (iii) the City Council \_\_\_\_\_, 2010 meeting minutes approving the Agreement.

In rendering our opinion, we also have examined such certificates of public officials, organizational documents and records and other certificates and instruments as we have deemed necessary for the purposes of the opinion herein expressed and, with your permission, have relied upon and assumed the accuracy of such certificates, documents, records and instruments. We have made such examination of the laws of the State of Indiana as we deemed relevant for purposes of this opinion, but we have not made a review of, and express no opinion concerning, the laws of any jurisdiction other than the State of Indiana.

We have relied upon and assumed the truth and accuracy of the representations, certifications and warranties made in the Agreement and the Authorization Documents, and have not made any independent investigation or verification of any factual matters stated or represented therein. Whenever our opinion or confirmation herein with respect to the existence or absence of facts is indicated to be based upon our knowledge or belief, it is intended to signify that, during the course of our representation of the City in this matter no information has come to

the attention of the attorneys who participated in the representation which would give us actual knowledge of the existence or absence of such facts. Except to the extent expressly set forth herein, we have not undertaken any independent investigation to determine the existence or absence of such facts or circumstances or the assumed facts set forth herein, we accept no responsibility to make any such investigation, and no inference as to our knowledge of the existence or absence of such facts or circumstances or of our having made any independent review thereof should be drawn from our representation of the City.

In rendering this opinion letter to you, we have assumed with your permission:

(i) The genuineness of all signatures, the legal capacity and competency of natural persons executing the Agreement, whether on behalf of themselves or other persons or entities, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies, and the authenticity of the originals of such copies, and the completeness of all records of corporate proceedings provided to us.

(j) All official public records (including their proper indexing and filing) furnished to or obtained by us, electronically or otherwise, are accurate, complete and authentic.

(k) The documents that have been or will be executed and delivered in consummation of the transactions contemplated by the Agreement are or will be identical in all material and relevant respects with the copies of the documents we have examined and on which this opinion is based.

(l) Concessionaire (i) has been organized, is validly existing, and where applicable is in good standing under its jurisdiction of **[incorporation/organization]**, (ii) has full **[corporate/organizational]** power and authority to enter into, execute, deliver, receive and perform the Agreement, and (iii) is qualified to do business in the State of Indiana.

(m) The entry into, execution, delivery, receipt, and performance of the Agreement by Concessionaire has been duly authorized by all requisite action on the part of Concessionaire.

(n) The Agreement will be duly entered into, executed, received and delivered by Concessionaire, and upon such execution and delivery constitutes the legal, valid and binding obligation of Concessionaire, so that the Agreement has mutuality of binding effect.

(o) The respective factual representations, statements and warranties of the City in the Agreement, and in the other documents that we have reviewed, and upon which we have relied, are accurate, complete and truthful.

(p) The execution and delivery of the Agreement by all parties thereto will be free of intentional or unintentional mistake, misrepresentation, concealment, fraud, undue influence, duress or criminal activity.

(q) The Agreement has not been amended or modified by oral or written agreement or by conduct of the parties thereto.

(r) Each party to the Agreement will at all times exercise its rights and remedies under the Agreement in good faith and in a manner that is commercially reasonable.

Based on and subject to the foregoing and the qualifications, exceptions and limitations referred to below, we are of the opinion that, on the date hereof:

1. The City has been duly organized and is a validly existing municipal corporation and political subdivision under and by virtue of the laws of the State of Indiana.

2. The City Council has adopted and the Mayor has signed into law the Metered Parking System Ordinance, which remains in full force and effect.

3. The City has duly authorized and approved (i) the execution and delivery of the Agreement; and (ii) the performance by the City of its obligations contained in the Agreement. The City has the power and authority under Indiana law to enter into the Agreement and to do all acts and things and execute and deliver all other documents as are required under the Agreement to be done, observed or performed by the City in accordance with the terms thereof.

4. The Agreement has been duly authorized, executed and delivered by the City and constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with the terms thereof.

Each of the opinions set forth above is limited by its terms and subject to the assumptions hereinabove stated and is further subject to the following qualifications, exceptions and limitations, none of which shall limit the generality of any other assumption, qualification, exception or limitation.

A. The legality, validity and enforceability of the Agreement, the rights of the Concessionaire and the opinion expressed in paragraph 4 above may be limited or otherwise affected by:

(i) bankruptcy, insolvency, reorganization, liquidation, readjustment of debt, receivership, moratorium, fraudulent conveyance, equitable subordination, equity of redemption, recharacterization or other similar legal principles now or hereafter in effect governing or affecting the rights and remedies of debtors and creditors generally, or general principles of equity, regardless of whether considered in a proceeding at law or in equity;

- (ii) applicable laws or judicial decisions of the State of Indiana which may render certain of the rights, remedies, waivers, and attorney-in-fact appointments contained therein unenforceable or ineffective, but the inclusion of which do not render the Agreement invalid as a whole or make the remedies generally afforded thereunder inadequate for the practical realization of the principal benefits intended to be provided by those documents; and/or
- (iii) the concepts of good faith and fair dealing, materiality and reasonableness, regardless of whether considered in a proceeding at law or in equity.

Notwithstanding the foregoing and without limiting the generality of the foregoing exceptions, we express no opinion with respect to (a) the availability of the remedies of specific performance or injunctive relief, (b) the availability of ex parte remedies and other self-help or non-judicial relief, (c) set-off rights or (d) the legality, validity, binding effect, or enforceability of provisions that provide for an event of default or availability of remedies predicated solely upon commencement of bankruptcy, reorganization or similar proceedings with respect to the City.

B. We wish to advise you that under Indiana law, contractual indemnification and hold harmless provisions seeking to cover the indemnified party's own negligence, strict liability or other acts or omissions may not be enforceable to the extent the contract does not clearly and unequivocally specify that the indemnity or exculpation covers claims, losses, expenses or other liabilities arising or alleged to arise, in whole or in part, from the negligence, strict liability or other acts or omissions of the indemnified party. At least one Indiana case, Wilson Leasing Co. v. Gadberry, 437 N.E.2d 500 (Ind. Ct. App. 1982), states that indemnification clauses generally are strictly construed and that the terms must be set forth clearly and unequivocally. Another Indiana case, Powell v. American Health Fitness Center, 694 N.E.2d 757 (Ind. Ct. App. 1998), states that exculpatory clauses must both specifically and explicitly refer to the negligence of the party seeking release from liability. Further, indemnification or exculpation as against certain claims, losses, expenses, or other liabilities arising as the result of the indemnified party's violation of federal or state statutes, or the indemnified party's own tort liability when performing a public or quasi-public duty, or other acts or omissions, may be considered contrary to public policy and therefore invalid and/or unenforceable. Our opinion set forth in paragraph 4 above is limited by and subject to the Wilson Leasing and Powell decisions and these principles.

C. Except as set forth in paragraph 2 above, we express no opinion and make no statements concerning or with respect to any statutes, ordinances, administrative decisions, rules, and regulations of counties, towns, municipalities or special political subdivisions.

D. Without limiting the generality of any other exception, limitation or qualification, we express no opinion in this letter with respect to (i) the enforceability of a set-off right, (ii) the application of any law, statute, rule or regulation relating to the environment, health or safety; (iii) any law, statute, rule, or regulation that may apply to any party as a result of its activities in the State of Indiana that are not directly related to



the transactions contemplated by the Agreement; (iv) the enforceability of any provision of the Agreement pertaining to consent to jurisdiction in so far as it relates to federal courts or agreements stating that failure to exercise or delay in exercising rights will not operate as a waiver of the right or remedy; (v) the enforceability of any provisions of the Agreement to the extent that any recovery of attorneys' fees is not limited to reasonable attorneys' fees; and (vi) the validity or enforceability of any purported waiver or purported consent relating to any other rights of any party, or duties owed to any of them, existing as a matter of law, including the purported waiver of any party's right to a jury trial.

E. We have not considered and do not express an opinion with respect to (i) any federal or state (including Indiana) securities, tax or antitrust laws and regulations, (ii) the power and authority of Concessionaire to enter into the Agreement or to carry out the transactions contemplated thereby, or (iii) the possible application of or compliance with various building codes, zoning ordinances, permit requirements, environmental, health or safety laws and other similar statutes, laws, ordinances, codes and regulations affecting the construction, condition and/or use of the Metered Parking System. Our opinions set forth in this letter are expressly subject to the effect of the application of all federal and state (including Indiana) antitrust laws and regulations.

F. The rights of the Concessionaire and the enforceability of the Agreement may be subject to the valid exercise of the constitutional powers of the City, the State of Indiana and the United States of America.

The opinions expressed herein are matters of professional judgment, are not a guarantee of result and are effective only as of the date hereof. We do not undertake to advise you of any matter within the scope of this letter that comes to our attention after the date of this letter and disclaim any responsibility to advise you of any future changes in law or fact that may affect the opinions set forth herein. We express no opinion other than as hereinbefore expressly set forth. No expansion of the opinions expressed herein may or should be made by implication or otherwise.

We are informed that you are relying on this opinion letter in connection with the consummation of the actions and transactions contemplated by the Agreement. The foregoing opinion shall not be relied upon for any other purpose or by any other party. The use or reliance upon this opinion letter by any other person or entity without our prior written consent is strictly prohibited.

Very truly yours,

## SCHEDULE 8

### FORM OF LEGAL OPINION OF THE CONCESSIONAIRE

[Letterhead of Counsel to the Concessionaire]

[Closing Date]

Ladies and Gentlemen:

We have acted as special counsel to \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (the "Concessionaire"), in connection with the grant of the right to operate the Metered Parking System, from the City to the Concessionaire pursuant to the City of Indianapolis Parking Meter Concession Agreement, dated as of \_\_\_\_\_, 2010 (the "Agreement"), by and between the City and Concessionaire. This opinion is being delivered to you pursuant to Section 2.4(b) of the Agreement. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Agreement; and (ii) such other records and writings as we have deemed necessary as the basis for the opinions set forth below. In connection with such examination, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to authentic, original documents of all documents submitted to us via facsimile or otherwise as certified, conformed or photostatic copies, and the completeness of all records of corporate proceedings provided to us.

We express no opinion as to the applicability or effect of the laws of any state or jurisdiction other than the laws of the State of [•].

Based on and subject to the foregoing and the qualifications referred to below, we are of the opinion that, on the date hereof:

1. The Concessionaire is duly organized, validly existing and in good standing as a limited liability company under the laws of the State of \_\_\_\_\_.
2. The Concessionaire has the power and authority to enter into the Agreement and to do all acts and things and execute and deliver all other documents as are required under the Agreement to be done, observed or performed by the Concessionaire in accordance with the terms thereof.
3. The Concessionaire has duly authorized, executed and delivered the Agreement, and the Agreement constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

This opinion is rendered solely for your information in connection with the transaction described above and may not be relied upon by you in any other capacity or for any other purpose and may

not be used or relied upon by any other Person for any purpose without our express prior written consent.

Very truly yours,

[Counsel to the Concessionaire]

## SCHEDULE 9

### FINANCIAL INFORMATION

#### Parking Meter Historical Financial Summary

\$'000s

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Parking Meters	2,139.8	2,131.1	2,129.2	2,140.6	2,226.7	2,196.4	2,246.7	2,227.8	2,237.7	2,269.0
Blockout	84.6	26.2	70.8	55.5	119.7	238.6	122.0	202.0	125.9	151.7
Parking Violations *	1,274.7	1,211.0	1,306.5	1,186.9	995.1	1,165.7	1,417.7	1,813.1	1,930.3	1,691.4
<b>Total Operating Revenue</b>	<b>3,499.1</b>	<b>3,368.4</b>	<b>3,506.5</b>	<b>3,383.0</b>	<b>3,341.5</b>	<b>3,600.7</b>	<b>3,786.3</b>	<b>4,242.9</b>	<b>4,293.9</b>	<b>4,112.1</b>
Personal Services	202.8	223.8	256.0	208.0	232.0	221.6	234.6	243.2	247.0	278.8
Contractual Services	580.0	584.8	653.3	667.6	471.3	648.7	648.4	651.5	500.8	511.8
Internal Charges	142.5	140.4	40.5	84.0	81.1	76.9	77.0	71.8	60.2	53.5
<b>Total Operating Expenses</b>	<b>925.3</b>	<b>949.0</b>	<b>949.8</b>	<b>959.6</b>	<b>784.4</b>	<b>947.2</b>	<b>959.9</b>	<b>966.5</b>	<b>808.0</b>	<b>844.1</b>
<b>EBITDA</b>	<b>2,573.8</b>	<b>2,419.3</b>	<b>2,556.7</b>	<b>2,423.4</b>	<b>2,557.1</b>	<b>2,653.6</b>	<b>2,826.4</b>	<b>3,276.5</b>	<b>3,485.9</b>	<b>3,268.0</b>
Supplies and Equipments	0.6	2.2	45.6	37.2	52.6	37.1	29.9	64.4	80.0	78.6

**Notes:**

\*Parking Violations revenue includes non-meter violations revenue, which the Concessionaire will not be entitled to collect; non-meter related violations accounted for ~20% of total citations collected in 2009

#### Adjusted Parking Meter Historical Financial Summary - 2008 & 2009

\$'000s

	2008	2009
Parking Meters	2,237.7	2,269.0
Blockout	125.9	151.7
Parking Violations *	1,469.5	1,310.1
<b>Total Operating Revenue</b>	<b>3,833.1</b>	<b>3,730.8</b>
Personal Services	247.0	278.8
Contractual Services	500.8	511.8
Internal Charges	60.2	53.5
<b>Total Operating Expenses</b>	<b>808.0</b>	<b>844.1</b>
<b>EBITDA</b>	<b>3,025.1</b>	<b>2,886.7</b>
Supplies and Equipments	80.0	78.6

**Notes:**

\*Parking Violations revenue includes only meter related violations revenue based on T2 Systems' meter citations collected for 2008 and 2009

I/2504638.8

## Schedule 10

### SPECIAL EVENTS

EVENT***	DURATION AND APPROXIMATE TIME OF YEAR	METER LOCATION	METERS REQUESTED
Women's & Men's Big Ten Tournament	11 days (Early March)	Pennsylvania Street b/w Maryland and Georgia Illinois Street (east curb lane under train bridge) and west curb lane of ILL near Pan Am Plaza	12 meters
Men's Big Ten Tournament	4 days (Early March)		14 meters
NCAA Women's Final Four	10 days (Late March and Early April)	Maryland Street b/w Missouri and Capitol Ave	12 meters
NCAA Women's Final Four	10 days (Late March and Early April)	Capitol Ave b/w Washington and Maryland	9 meters
NCAA Women's Final Four	6 days (Early April)	Downtown hotel properties (4 locations)	40 meters
NCAA Women's Final Four	6 days (Early April)	Shuttle stops (2 locations)	8 meters
NCAA Women's Final Four	6 days (Early April)	Pennsylvania Street b/w Maryland and Georgia	12 meters
NCAA Women's Final Four	4 days (Early April)	Special Event Parking (one day events)	25 meters
NCAA DI Women's Swimming & Diving	4 days (Late March)	Various meter locations at IUPUI near Natatorium and UPCC	10 meters
NCAA DI Men's Swimming & Diving	3 days (Late March)	Various meter locations at IUPUI near Natatorium and UPCC	10 meters
NCAA Men's and Women's DI Basketball Regional	5 days (Late March)	Hotel Locations are TBD - Maximum 4 downtown hotel properties	40 meters
NCAA Men's Final Four	9 days (Early March and Late April)	Maryland Street b/w Missouri and Capitol Ave	12 meters
NCAA Men's Final Four	9 days (Early March and Late April)	Capitol Ave b/w Washington and Maryland	9 meters
NCAA Men's Final Four	6 days (Early April)	Downtown hotel properties (4 locations)	40 meters
NCAA Men's Final Four	6 days (Early April)	Shuttle stops (4 locations)	16 meters
NCAA Men's Final Four	4 days (Early April)	Special Event Parking (one day events)	25 meters
NCAA Men's Final Four	4 days (Early April)	North curb lane - Washington Street b/w Capitol and Senate (state capitol)	10-15 meters
NCAA Women's Final Four	10 days (Early March and Late April)	Maryland Street b/w Missouri and Capitol Ave	12 meters
NCAA Women's Final Four	10 days (Early March and Late April)	Capitol Ave b/w Washington and Maryland	9 meters
NCAA Women's Final Four	6 days (Early April)	Downtown hotel properties (4 locations)	40 meters
NCAA Women's Final Four	6 days (Early April)	Shuttle stops (2 locations)	8 meters
NCAA Women's Final Four	4 days (Early April)	Special Event Parking (one day events)	25 meters
Super Bowl	39 days (Mid January to Early February)	All meters on streets directly surrounding Lucas Oil Stadium	All meters in such location
Super Bowl	10 days prior to Super Bowl	All meters on streets directly surrounding the Indiana Convention Center	All meters in such location

EVENT***	DURATION AND APPROXIMATE TIME OF YEAR	METER LOCATION	METERS REQUESTED
Super Bowl	10 days prior to Super Bowl	Georgia Street between Capital and Pennsylvania; Meridian Street between Monument Circle and South Street; meters one block north, east and west of Monument Circle	All meters in such location
Super Bowl	3 days (Thurs - Sat. before the Super Bowl)	Zones 1 and 2 South of Michigan Street	All meters in such location
Super Bowl	22 days (Mid January to Early February)	Meters on Streets surrounding Accreditation Center	All meters in such location
Super Bowl	18 days (Late January to Early February)	Meters on Streets surrounding Media Center	All meters in such location
Super Bowl	18 days (Late January to Early February)	Meters on Streets surrounding Team and NFL Headquarter Hotels	All meters in such location
500 Festival Parade	Thursday through Saturday (3 days)	Vermont from Meridian to Pennsylvania	All meters in such location
500 Festival Parade	Wednesday (1 day)	Pennsylvania ( North St. to Washington St.)	All meters in such location
500 Festival Parade	Wednesday (1 day)	Washington ST. (Pennsylvania St. to Meridian St.)	All meters in such location
500 Festival Parade	Wednesday (1 day)	Meridian St. ( Ohio St. to 11 <sup>th</sup> ST.)	All meters in such location
500 Festival Parade	Saturday (1 day)	11 <sup>th</sup> from Illinois to Delaware	All meters in such location
500 Festival Parade	Saturday (1 day)	10 <sup>th</sup> from Illinois to Delaware	All meters in such location
500 Festival Parade	Saturday (1 day)	St Joseph from Illinois to Delaware	All meters in such location
500 Festival Parade	Saturday (1 day)	9 <sup>th</sup> from Illinois to Delaware	All meters in such location
500 Festival Parade	Saturday (1 day)	St Clair from Capitol to East	All meters in such location
500 Festival Parade	Saturday (1 day)	Walnut from Illinois to Meridian	All meters in such location
500 Festival Parade	Saturday (1 day)	Walnut from Pennsylvania to Delaware	All meters in such location
500 Festival Parade	Saturday (1 day)	Talbott from St Clair to Walnut	All meters in such location
500 Festival Parade	Saturday (1 day)	Ft Wayne from Walnut to North	All meters in such location
500 Festival Parade	Saturday (1 day)	North from Illinois to East	All meters in such location
500 Festival Parade	Saturday (1 day)	New Jersey from Michigan to St Clair	All meters in such location
500 Festival Parade	Saturday (1 day)	Michigan from Indiana to New Jersey	All meters in such location
500 Festival Parade	Saturday (1 day)	Vermont from Capitol to Alabama	All meters in such location
500 Festival Parade	Saturday (1 day)	New York from Capitol to Alabama	All meters in such location
500 Festival Parade	Saturday (1 day)	Ohio from Illinois to Delaware	All meters in such location
500 Festival Parade	Saturday (1 day)	Market from Illinois to Delaware	All meters in such location
500 Festival Parade	Saturday (1 day)	Washington from Illinois to Delaware	All meters in such location
500 Festival Parade	Saturday (1 day)	Illinois from Maryland to Michigan	All meters in such location
500 Festival Parade	Saturday (1 day)	Illinois from Michigan to 16 <sup>TH</sup>	All meters in such location
500 Festival Parade	Saturday (1 day)	Monument Circle including approaches	All meters in such location
500 Festival Parade	Saturday (1 day)	Meridian from Maryland to 16 <sup>TH</sup>	All meters in such location

<b>EVENT***</b>	<b>DURATION AND APPROXIMATE TIME OF YEAR</b>	<b>METER LOCATION</b>	<b>METERS REQUESTED</b>
500 Festival Parade	Saturday (1 day)	Pennsylvania from 16 <sup>th</sup> to Maryland	All meters in such location
500 Festival Parade	Saturday (1 day)	Delaware from Maryland to I-65	All meters in such location
500 Festival Parade	Saturday (1 day)	Delaware from I-65 to 16 <sup>th</sup>	All meters in such location
500 Festival Parade	Saturday (1 day)	W. Market	All meters in such location
500 Festival Parade	Saturday (1 day)	E. Georgia	All meters in such location

\*\*\*Note- These Special Events could be applicable on more than one occasion and they will be considered Special Events upon every occurrence. For example, the 500 Festival Parade occurs every May.